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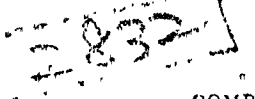
LOCAL SELF-GOVERNMENT

AND

CENTRALIZATION:

THE CHARACTERISTICS OF EACH; AND ITS PRACTICAL TENDENCIES, AS AFFECTING SOCIAL, MORAL, AND POLITICAL WELFARE AND PROGRESS.



INCLUDING

COMPREHENSIVE OUTLINES

OF THE

ENGLISH CONSTITUTION.

With Copious Index.

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BY

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LONDON:

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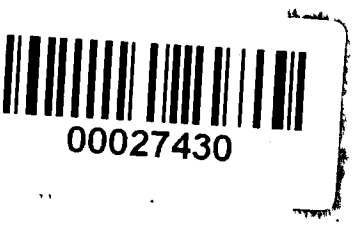
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PREFACE.

The nature of this Work is sufficiently stated in the Introduction, and summed up in the Conclusion. It is only necessary to say here, that it is designed to give a view of Broad and Lasting Principles. It is not temporary, either in subject or object; though the Principles developed will, as being permanent and fundamental, find immediate application to many questions of interest at the time of its publication.

It is, perhaps, proper to remark that the Work is intended for the General Reader. I hope to have divested it of the obscurities and technicalities of expression to which parts of its subject might render it sometimes liable.

Some of the points here touched upon have been more fully discussed in some of my former works. To avoid needless repetition, therefore, I have referred to

the latter, the titles of which are given below;*—omitting nothing here, however, necessary to make the connections of the parts of the present Work clearly understood.

I have sought to ensure accuracy in the many references necessarily given. In this, as in other important respects, I may be allowed to record here, that very much has been due, throughout, to the willing assistance given by two, very near and dear to me; one of them, alas! suddenly taken from me within a few hours after the last proof sheet had reached me:—and, with him, are cut off many of the most fondly-cherished hopes of many years of happy promise.

* Government by Commissions Illegal and Pernicious. The Nature and Effects of all Crown-appointed Commissions: the Constitutional Principles of Taxation: and the Rights, Duties, and Importance of Local Self-Government. [Referred to in this Work thus:—"Government by Commissions."]

Parallels between the Constitution and Constitutional History of England and Hungary. [Referred to thus:—"Parallels between England and Hungary."]

What is the Corporation of London, and who are the Freemen? [Referred to thus:—"Corporation and Freemen."]

Highgate: near London.
March, 1851.

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LOCAL SELF-GOVERNMENT

AND

CENTRALIZATION.

INTRODUCTION.

MIGHTY stands the World-tree Yggdrasil. Her three wide-spreading roots strike deep. The one stretches even to the spring that lies in the murky land of uncertain mist: another stretches into Giant-Land, and near to Mimer's spring, whence draughts of knowledge and wisdom are each morning quaffed, and which Odin's self has not disdained to seek: the third stretches to the dwelling place of the Gods, and is found near Urda's spring, whose waters surpass in purity those of the whole world beside. High is upreared the lofty trunk of Yggdrasil; and her green and spreading branches,—beneath which the Gods themselves often-times meet in counsel,—overshadow the whole earth, and reach upwards to the heavens. From their leaves drop the gentle dews which keep this fair earth green, and glad, and fruitful. Safely lodged amid Yggdrasil's high branches sits a noble Eagle, whose eyes are ever on the watch to gather knowledge of all things far and near. But, nigh that root of Yggdrasil which stretches into the hidden murky land of mist, there lies a monstrous Dragon, grim and foul, which gnaws for ever at the World-tree's root, and seeks to sap its strength. A squirrel runs ever up and down the trunk, and strives to

breed mischief between the Eagle and the Dragon. Four huge-antlered stags browse upon the branches of the tree, and nip off its young and promise-giving buds. Its bark and sides are ever mouldering away; for the tree has lived through untold ages. Soon would Yggdrasil decay and die but that, near Urda's spring, there dwell the three maidens who spin the fates of men: and these three take water, each morning, from Urda's spring, and pour it over the branches of the mighty tree; and so is its strength maintained, and its health and blessing-giving shelter are renewed for ever.*

It were impossible to tell more strikingly than is done in this beautiful relic of the Mythology of our fathers, the everlasting truth of the great principle of human freedom; the blessings which spring from it, when well maintained; the dangers which continually threaten it; and the means by which alone it can be maintained in healthy vigour.

There is no human institution, any more than any human-made machine, which is not liable to become disarranged. The more delicate the machine the more it needs care and attention. The more important the institution the more is watchfulness needed for the maintenance of its healthy working. It has been well said that, while "those who are quite

* The following may be offered, as giving as nearly literal a translation of some of the original passages of the Elder Edda in which this exquisitely beautiful myth is found, as can perhaps be rendered in rythmical phrase. How well is the sense of calm repose expressed,—and again of never-ending dangers:—

"I know where stands the mighty Ash
Hight Yggdrasil so fair,—
That wide-spread tree o'er whose high tops
Are shed the waters clear.
Thence fall soft dews
On every dell;
And green for ever stands that goodly tree
O'er Urda's Well.
—[*Vala Spaudom.*]
Ratatosk the squirrel hight
That runs for ever up and down
The great ash Yggdrasil:

satisfied sit still and do nothing, those who are not quite satisfied are the sole benefactors of the world." * Things daily before us, however marvellous, are apt to pass unheeded. Day and night succeed each other, and rouse no sense of wonder; in most, no spirit of Inquiry. So it is with the external aspects and institutions of human society. So long as the outward likeness of peace and order is kept, that which maintains it, or may mar it, is too often not thought of; and even held, by many, dangerous to be inquired into. It is the storm and the whirlwind which fix attention; and their approach is dreaded, and yet, by that very dread, made more threatening.

It is man's nature to be active in mind and body. It is the feeling of some *want* which stimulates every thought and action. Hence, unless the healthy and growing sense of *want* in some,—and the consequent effort of mind and body to attain it,—is unrighteously crushed by some temporary and unequal force, there will be a perpetual tendency to antagonism and disharmony if Institutions do not exist, and are not carefully maintained unimpaired, which allow free scope for the development of both thought and action. And those Institutions can alone be sound, and have hope of per-

> The Eagle's words he greedy takes
> From his high dwelling place above
> And bears to Nidhug low.
> And there the four great Stags are seen
> All gnawing at the branches green
> For aye with heads upturned.
> More dragons foul lie grovelling low
> Beneath the great ash Yggdrasil
> Than any man can tell.
> Alas! the mighty Yggdrasil!—
> More suffers she of woe and ill
> Than man can see or know.
> The greedy stags the branches gnaw—
> The sides are mouldering fast away—
> Beneath lurks Nidhug low."
>
> —[*Grimnersmaal.*]

* Landor's Imag. Conv., vol. ii. 2nd series. *Barrow and Newton.*

manent endurance, which combine the effect, of both maintaining present peace and order and yielding fullest scope for the development of thought and action, with that of making men ever feel, and act upon the feeling, that the duty and responsibility lies on all of ceaseless watchfulness and individual personal effort, in order to maintain those Institutions unimpaired.

There has been no time nor land in which the maintenance of free Institutions has not been constantly threatened; in which the Dragon has not been gnawing at the root, and the Stags nipping the young buds of promise; and in which the ceaseless watering from Urda's spring has not been needed. The kind and manner of attack may differ: now it may be open and by arms,—now secretly and stealthily. But there is no time, and never will be any till the elements of human nature are changed, when moral energy and thoughtful effort can be dispensed with to mark and meet the tendencies of each event that happens; when the true man shall not be called upon to put forth vigorous exertion towards the attainment of that which the light he has enables him to see as an effort-worthy end. And, to insure human development and progress, there cannot be a happier provision than this.

Through over confidence in the self-maintenance of the free Institutions which they have once had, how many peoples, once among the free-est, have gradually and insensibly sunk into the lowest condition of political and moral servitude; until, even when the shout has risen, calling them to what might have been the successful struggle for their long lost liberties, they have found themselves so cramped by the chains they have long worn, as to be unable to make any other than convulsive and resultless efforts. It is not true, what is often said, that any race or nation, whether the English or any other, has certain instincts of freedom so deeply implanted that it may safely laugh to scorn any steps at enthralment. All Europe reads a lesson showing the falseness of such reliance. By Englishmen, whose traditions

are of freemen and of free Institutions, it is, above all others, necessary that it should be thoroughly understood, and continually felt, that the roots of that great World-tree of Freedom under whose shadow they dwell strike into deep places; that some of them always have had, and ever will have, secret enemies gnawing at their juices; and that there always have been, and ever will be, some more open foes, who would browse upon the fruitful branches; that the bark of that old trunk will ever be in some places mouldering away; and that renewed strength and a maintained and healthy shelter-giving life must depend upon the waters of that Urda's spring being found which, daily poured out, shall always hinder decay and master every attack, whether from hidden or from open foes.

The great question arises:—where is that Urda's spring? The present work proposes an answer to this question.

The first and chief point in the secular education of a free people ought to be a thorough knowledge and understanding of the principles on which the Institutions and Laws they live under are founded. But if there is one subject now less studied and less understood than another in England it is this. Neither in our schools, our colleges, nor universities is it taught, nor does the literature of the day help its acquisition. Within the walls of Parliament and without, among every rank and profession, a profound indifference, or positive distaste, as to a subject of so much importance, equally exists. Formerly the case was far otherwise. And it is to the existence of a far different spirit that we owe the maintenance of the liberties of England through many centuries of trial.

Even those who have professed to write on the subject of the English Constitution have usually, in later times, touched upon it on the outside only, and not sought the inner secrets of its workings. Hence must be explained the barrenness and unprofitableness which are commonly regarded as attending the study. And great is the mischief that has hence ensued.

This outside method is necessarily not only imperfect in

itself but untrue in its results. It is as if the anatomist were to confine himself to remarking and recording the motions and actions of the animal of his study, as seen clothed in all its outward coverings, and to draw thence his conclusions, instead of carefully dissecting the inner parts of the body, and observing and noting every muscle, nerve, and vessel. Our Historians and Politicians have been, and are, content to note, and theorize upon, that which is merely general and external, and therefore of least actual practical importance, in our Political and Social system, neglecting that inner and active working which must always, in every Social and Political system, constitute its essence. They forget, in the undoubtedly great relief thus given to their labours, that the liberties of a people can never be so effectually trampled on as while the theory of a free government and the general forms of free Institutions remain unaltered; but that, although "subjects may be happy and contented enough, if they please, under any form of Government, where the Governors are of equal capacity and honesty, and have a hearty Love and Concern for the common good of their people,—where these are wanting, it is not mere Forms and empty Names that can make them so;"* and that, consequently, no people can be truly free, whatever the name or external form of its government, whose Institutions allow its welfare to depend on the contingency of the capacity and honesty, the love and concern, of any special number of individuals out of the whole body.

Every nation must have, as the consequence of its national existence, certain external and general relations. But these, and the machinery for carrying them out, are, self-evidently, of trifling importance to the well-being of the nation, in comparison with those inner and particular relations which enter into the daily transaction of affairs between man and man. The latter, though not unaffected by the former, will always be indirectly so only; while the true character and practical bearing of the former can only be understood,

* Tyrrell's *Bibliotheca Politica*, Pref., p. vi.

through the disguises of forms and names they can always put on, by a thorough insight into and understanding of the latter. However complete, therefore, the picture of those former, derived from an outside view of them, may seem, it will convey the most imperfect, and often most erroneous, notions as to the latter. Unhappily it is on such an outside view of History and Human Society only that writers on forms of Government, whether general or special, European or English, have usually founded their theories and reasonings. Such are not the means by which the waters of Urda's spring can be ever reached, when once the practical traditionary path has become disused.

There are some, indeed, who deny or doubt that there is any reality at all in the English Constitution. And there are many who attach the terms "Constitutional" and "Unconstitutional" to what happens, or not, to agree with their own ideas of the fitness of things. If this be admitted as true or legitimate, the search for Urda's spring may at once be given up as hopeless. The world must be taken to have been always, and to be destined to be always, in a merely experimental condition, with no solid foundations for either social, moral, or political hopes or well-ordering. It will be found, however, from these pages, that the English Constitution is something very real, true, and solid; and that it affords foundations whereon may safely and impregnably be reared conditions the best adapted to secure social, moral, and political hopes and well-ordering.

Freedom and free Institutions and good government do not consist only in protection to person and property. This truth cannot be too strongly enforced. Person and property may be protected, and yet the nation be a nation of slaves,—without one free aspiration, or one thought beyond that selfish gratification the devotion of engrossing attention to which, and to accumulating the mercenary means of which, is always the result, and the unerring symptom, of the weakening of that abiding sense of duty and responsibility which lies at the foundation of free Institutions. On the other

hand, person and property will always be secured with the most assured and lasting certainty, other circumstances of external relations being the same, where true free Institutions exist most fully developed, and where selfishness and individual seekings have not yielded to the temptations which it is the craft of despotism always to hold out.

True Freedom consists in the continual active consciousness of the position and responsibilities of a Free Man, a Member of the State, and a positive Item in it. The Free Man will feel that he has something to live for beyond the attainment of mere personal ease and comfort; that he has, as a member of the State, certain important and active Rights, and Duties and Responsibilities co-extensive with them, in relation to his fellow-men; that he has faculties beyond the mere sensual ones,—the strength of which he is bound to put forth, in order to help the great work of human happiness and progress.

It is the striking characteristic of the English Constitution, and one of the surest proofs that it is founded on eternal truth, that, still retaining all its own strength and vigour, it opens the means to every step in Human Progress, not only without violence, but in the most willing and effective manner. And it will always, while the English Constitution retains any vitality at all, be the surest test of the earnestness and sincerity of any man for true progress, whether he proposes to accomplish any end he has in view by the operation of those means which the Constitution itself affords, or whether he seeks to devise new means unknown to and inconsistent with that Constitution. Force of arms, or the stake and faggot, may be the means the foe of freedom and true progress would employ in one age; in another he may clothe his attempts under the forms of Law or the disguise of Acts of Parliament. The spirit remains the same, and the test unerring.

Even the commonest rights of individual free action and of property,—which are almost convertible terms,—are dependent upon established law. Not only is this so, but it clearly

cannot but be so if there is to be any right beside that of the strongest, and so, any national union and national progress. It is clearly necessary to the development of the resources of art, science, and agriculture, that laws and institutions shall exist in whose permanence there shall be a felt confidence. Every shakening of that confidence, every doubt raised as to that permanence, is a blow against human welfare and progress. Every man, however benevolent may seem his motives, who sneers at, or would recklessly violate, the fundamental Laws and Institutions of his country, is, in truth, attacking the elements of social, moral, and national existence, and doing his best towards causing his race to retrograde instead of advance. Before men will put forth energies which look to a future for their result, they must have a guarantee that such result will be insured to those who venture on the enterprise. That guarantee can only be maintained unbroken by constant jealous active watchfulness. Hence the immediate connection between the ordinary pursuits of individual enterprise and the duties owing by the individual to the State.

There never has been any nation of which it may be so truly and happily said as of England, that there are fundamental Laws and Institutions, clear and unmistakeable, the birthright and inheritance of every citizen; appeal to which at any time, and in reference to any project, will be a far better security for all rights and liberties, afford a far surer guarantee for human progress, and yield a far purer draught of the waters of Urda's spring, than any new experimental scheme that any closet theorist can devise. We are told, as to certain carefully devised written Laws which were once sought and obtained in England, with too much idea perhaps of their being an end rather than a means, that "never were laws amongst men established with more majesty of ceremony to make them reverend and respected than these. They wanted but thunder and lightning from heaven (which if prayer could have procured they would likewise have had) to make the sentence ghastly and hideous to the infringers

thereof."* Yet were even these Laws found to be but as "spiders' webs," so far as their own efficacy went, and when not maintained by that energy of free-men, conscious of their position and responsibilities, which makes those free-men take their stand, on every attempt at encroachment, upon the Fundamental Laws, and through the means afforded by the Fundamental Institutions, of the Land. And such "spiders' webs" are all paper Constitutions, and the most carefully devised Statutes.

Fundamental Laws and Institutions, to be truly such, must rest on no empirical foundations. They must rest on unalterable PRINCIPLES, springing directly from the Constitution of man's nature.

The difference between the Moralist and the Casuist is this: the former is always, and in relation to every event, guided by certain broad unalterable rules, any idea of compromise or tampering with which is never admitted; the latter seeks to square the small specialties of every shade of action to what is most convenient, and so evades the restraints which the rules of the Moralist impose upon wrong, and the protection which they afford to right. And the same difference exists between the Statesman and the mere Politician. The former sees clearly and comprehensively certain fundamental principles, of tried and established truth, which, under all and any circumstances, he can alone recognise as right or safe to guide him. The latter disregards Principles altogether, or only refers to them when it may seem to suit his purpose: he heeds only the specialty of the moment; seeks only how he may deal with it for the convenience of the hour: he is, in short, the man of expediency. Society can only maintain an elevated and healthy tone, and its permanent well-being and progress be ensured, when the Rules of the Moralist and the Principles of the Statesman are alike recognised by all as supreme and never to be tampered with. †

* Prynne's Power of Parliaments, Part II., p. 37.

† See further as to the character of such *Principles*, "Government by Commissions," pp. 36, &c., and 91, &c.

Departing then from that merely outside view of History and Human Society to which writers on forms of Government have heretofore almost exclusively confined themselves, it is proposed in these pages to seek the true path to Urda's spring by other means. According to the sound principles by which alone any question can be studied with hope of reaching to the truth, it is proposed to give the results of a wide field of examination into *special instances*, as the only true means by which sound *generalizations* can be realized; to state clearly and without disguise the generalizations so reached; and to test, illustrate, and confirm the truth of those generalizations by applying them to a variety of different circumstances and conditions, on which they must necessarily throw light, if sound and true, but which will serve to demonstrate their hollowness and falsity if they be indeed unsound.

It will render the understanding of what follows clearer, if the nature of the generalizations to be developed is now shortly stated, together with the course that it is proposed to follow in dealing with the subject.

Those generalizations may be stated in a few words. Like every solid truth, they are characterized, as well in themselves as in all their applications, by their Simplicity, both theoretical and practical.

There are two elements to which every form of Government may be reduced. These are, LOCAL SELF-GOVERNMENT on the one hand, and CENTRALIZATION on the other. According as the former or the latter of these exists more or less predominant, will the state of any nation be the more or less free, happy, progressive, truly prosperous, and safe.

These elements go to the very bottom of the inner life and condition of a nation: they affect not merely its general and external relations. The common divisions of forms of Government into monarchical, aristocratic, democratic, and mixed, convey none but superficial ideas; they have no reality as illustrative of the inner and actual condition of any nation. With any one of these, the nation may be a nation of freemen, or, with the name unchanged, it may be a nation of slaves.

The real and only test must always be, whichever of those external forms is acknowledged,—is *Local Self-Government*, or is *Centralization*, the fundamental practical idea of the Constitution of the country?

As clearness of ideas is important, it should be stated thus early that the term *Centralization* is properly to be applied, not only, though it will be most frequently, to dictation from a Metropolitan centre; nor, on the other hand, is the term Local Self-Government ever to be applied to the mere management of affairs by *some*, or a few, practically irreponsible, in particular Local Districts. But,—

LOCAL SELF-GOVERNMENT *is that system of Government under which the greatest number of minds, knowing the most, and having the fullest opportunities of knowing it, about the special matter in hand, and having the greatest interest in its well-working, have the management of it, or control over it.*

CENTRALIZATION *is that system of Government under which the smallest number of minds, and those knowing the least, and having the fewest opportunities of knowing it, about the special matter in hand, and having the smallest interest in its well-working, have the management of it, or control over it.*

In developing the subject a general sketch will, in the first place, be given of the true characteristics and practical realities of the English Constitution. The general fundamental and practical Principles involved will then be considered more in detail, as well as the character and consequences of infringements upon those Principles. Certain of the more important General Applications of those Principles will next be traced, and contrasted with the growth and results of those infringements. Special illustrations, which will serve to individualize and bring directly home the importance of the whole Inquiry, will follow.

It must be clearly understood that, in introducing here the subjects included in the last fourteen chapters, it is not pretended to enter into the details of any one of them. They are introduced in order that more distinct ideas may be given of how wide and important, and immediately practical, is the ap-

plication of the Principles which it is the main object of this work to make clearly understood.

Many things may be found in these pages which will not agree with the dogmas commonly pronounced on the subject of the English Constitution, or with the common-places which, by often repetition, have come, without any true warrant, to be held as truisms. Though it will be impossible to bring up, in the compass of these pages, more than a very small part of the chain of proof by which each such point may be established, enough, it may be hoped, will be brought up to make every candid reader acknowledge that no point so advanced has been done hastily, or without substantial grounds. And a service will certainly be done in compelling the dealers in the dogmas and common-places thus assailed, to look about for some solid reasons to support what have been so long dealt in, or else to give way to what their inability to do this will so much the more prove to be the real wholesome truth.

To those who indulge in ideas of certain abstract "rights of man" as the foundations of their theoretical political doctrines, it may be remarked that it is not talking of the rights of man that shows the statesman; nor is it having the outward shape of humanity that can, on any logical or abstract grounds, be assumed to bestow any particular "rights." It must first be shown that men are capable of exercising the rights claimed, and how these are to be best practically exercised; and the co-extensiveness of the obligations to the discharge of certain *Duties* must form an essential element in the notion of such *Rights*. Those Institutions can alone be founded on truth and everlasting Principle, from which that capability, and its constant practical exercise, follow as consequences. That nation only can be free which is characterised by such Institutions. That man only can be a true Statesman who is guided always by the spirit of such Institutions; and who seeks to work out any ends of social, moral, or political improvement which the light he has may guide him to, through their

means. The man who seeks to accomplish any end by means or Institutions which, directly or indirectly, tend to lessen that capability, or the practical exercise of it, will be unworthy of the name of statesman; and, however much he may disguise his course under forms and names, he is an enemy to his country and to free Institutions. By none such will the path to Urda's spring be ever found. He is in league with the Dragon which gnaweth at the root of Yggdrasil; and he loveth not the maidens who pour the fresh waters on the mighty tree, whose trunk is Human Freedom, and whose fruitful branches are the Institutions under which alone men and nations can find true and lasting peace and happiness.

CHAPTER I.

THE ENGLISH CONSTITUTION.

"FREEDOM," says one of the most instructive writers on the Laws of England, himself Lord Chief Justice and Lord Chancellor 400 years ago,* "Freedom is grafted in man's nature of God. Whereof, if man be deprived, he is ever desirous to recover the same again; like as all other things do, that are spoiled of their natural liberty. Wherefore, wicked and cruel is he to be deemed that favoureth not liberty. Which things the Laws of England duly considering, do in all respects show favour to liberty." And "these liberties," says another very able writer,† "do thus differ from the concessions of Kings,—in that the latter are not attained but by his favour and graunt, whereas the others are such rights as have conserved this kingdom in freedom since the first establishing of it in the state of monarchy." "And this," he says again, "I take to be the difference between the Civil Laws and the laws of this nation: for the maxim there is,—'what pleases the prince has the force of law;' whereas this is,—that the kingdom shall be governed by no other laws than 'those which the folk and people have made and chosen.'"‡

It is thus the peculiar happiness of Englishmen that they have not now to strive to achieve for themselves the attainment of freedom, but that they can claim it as their inheritance from the earliest times. Their principal task is to study the modes of its development, at various times, and under

* Fortescue, De laudibus legum Angliæ, p. 101 (ed. 1672).

† "Certaine Considerations upon the Government of England," by Sir Roger Twysden, p. 82.

‡ Ib., 84 and 83.

various conditions; and to observe narrowly the nature of the encroachments that have, from time to time, been attempted to be made upon it. A more important task than this there cannot be, nor one more fruitful in practical results. One of the first of these results is to learn the methods which have been had recourse to with the end of narrowing that inheritance of freedom. Among these, one of the most often tried and most practically pernicious has been the distortion of historical fact. Thus, William the First has been represented as claiming sovranty in England by right of conquest; and as having, in that character, imposed the heaviest badges of slavery upon the people, and wrested from them the enjoyment of their liberties. Contrary to, and wholly unsupported by, facts as these representations are, they have well served the purposes of those who would support pretensions that can be only founded on the right of conquest, and who would derive all free institutions from concessions granted, instead of from inherent Rights and Duties, immemorially exercised. "If, however," says a learned writer, "in the dukedom which they acquired in France, the Normans in a short time adopted the language of that country and almost forgot their own; if they there, where they held free and unbounded sway, introduced no legal institute, no usage, which can be exclusively attributed to them, much less can any great innovations, caused by them, be looked for in England, which had for ages been inhabited not only by Saxons, but by their neighbours the Angles and the Jutes." *

Nothing is capable of clearer demonstration than that the Laws and Institutions of England did not undergo any essential alteration in the time of William the First; but that, on the contrary, those Constitutional principles of which free institutions are the development, existed, in living and active force, throughout his time and that of his successors. † Of this truth Domesday Book itself affords striking illustra-

* Lappenberg's England under the A. S. Kings, vol. ii., p. 13.

† See this subject pursued and illustrated at some length in "Government by Commissions," B. I., ch. ii., pp. 57 and following.

tions, to which attention will be hereafter called. It is unnecessary to do more now than disabuse the mind of any impressions it may have received respecting the nature of William's claim, and the effect of his reign, derived from those sources which have, unhappily, succeeded too well in distorting to the common eye this page of our history. The student of our Constitution must take up the records of his race from the earliest times, even from the page of Tacitus, and follow them down, unbroken, till the Revolution of 1688, if he would faithfully fulfil his task. There is no real break in the chain. The same great principles will be found to run through the whole, and to assert and re-assert themselves vigorously, from time to time, as encroachments and attempts at oppression made it necessary. The Historian, dazzled by externals, may dwell chiefly on the troubles and deeds of those in high places. But these external marks do not reach so far below the surface as the space and manner of their telling would seem intended to import. The inner political and social life of the nation has remained, through all these centuries, extraordinarily little changed in character and spirit.

It is a very different thing to sketch out, as the result of the careful observation of a wide range of history, the leading points of a Constitutional system, and to reduce them, in a few words, to one harmonious whole, from what it is to trace, by the comparative lights of history and logical analysis, the growth of the whole, or of parts, of that constitutional system. The former, and not the latter, is the present task. It suffices, as to the latter, to say, that it must not be implied that, at any one past period of our history, any one man arose, so far-seeing and so gifted that he was able to map out a system of Institutions which has endured through ages, and embodies perfection. The English Constitution has a truer origin than that. It has been the result of the maintenance, through ages, by men free when roaming the forests of Germany, and no less free when landing on the shores of England, of the active sympathies and aspirations of free

men; which they succeeded, through their strong practical good sense, in preserving in full activity, when in a more settled state, by falling, probably almost insensibly, into courses of habitual action and intercourse among each other, which, as we look back upon them now, it is impossible not to feel to surpass, in practical wisdom and efficiency, what the highest human foresight could have chalked out as a system.

The first point which strikes the careful observer is, that every inducement and opportunity is held out to every man, by which he shall be led to understand for himself every matter that concerns him, individually, or in his relations to those around him; to consider it well; to form a determination himself on the course which the exigency requires; and to aid in carrying out the determination which shall have been come to by the greatest number of the freemen of whom he is one. The English Constitution has always practically asserted that Society has a claim upon every one of its Members; that every man owes personal duties and responsibilities to the State, for which no commutation can be given; and that, in the active discharge of those duties consists, as has been before suggested, the highest and noblest condition of freedom.

Before detailing the modes in which these inducements have been held out, and these opportunities practically afforded, it will be well, shortly, to state the general features of what are demonstrable as the fundamental principles of the English Constitution, both as regards the Body Politic generally, and as regards the rights and safeguards of its Individual members.

As to the former; it is demonstrable that the Principles of the English Constitution are, that the will of the folk and people is the only foundation for the authority of any in whose hands any public functions may, for any time being, be lodged; that some definite means must always be had recourse to of truly ascertaining that will; that all in authority are to be, at all times, directly responsible, for every act,

to that will; that no new step can be taken, new law made, nor new office created, but after express appeal to that will; that all Local affairs shall be managed and controlled by the Local bodies only,—general affairs, affecting the common good of the community, being those only the management of which it is proper for the general government to control.*

As to the latter; it is demonstrable that the Principles of the English Constitution are, that no charge nor question can be raised affecting person or property, on the mere motion of any individual, or person in authority, nor unless supported by the testimony of known and responsible witnesses; that no inquiry nor adjudication by which either person or property can be in any way affected can be made except in open public places, whither all persons may freely resort; that no inquiry can be made affecting person or property, nor can any adjudication be made on any charge or claim of any nature or kind soever, except by the peers of him whose person or property is or may be affected, or against whom any claim or charge has been made.†

The practical ideas which lie at the bottom of the Institutions through the means of which these principles have a realized existence, may be stated as follows:—

1. Every man knows best how to manage his own affairs; and it is his right and duty so to manage them;—points which apply to associated *groups* of men, in reference to all the affairs which concern them as individual groups.

2. In all matters affecting him, either as a member of the State or of a particular associated Group, every man has the right and duty to know and understand all the bearings of the subject, and openly to discuss them; and, having discussed them, to express the determination thereupon of his own mind.

3. In no matters relating either to individuals or to asso-

* See "Government by Commissions," B. I., ch. ii., where these results are worked out and demonstrated; and see ib., p. 91.

† See "Government by Commissions," B. I., ch. iii.; and see ib., p. 158.

ciated groups can any one person or any clique, whether nearer or remoter, have the right to dictate either to the individual or to the group.

4. The Law, in every case, shall always be declared and administered by the group affected, or of which the individual affected is a member.

The question next arises,—which is, necessarily, the gist of this whole matter, and touches the essence of the Constitution,—what have been the practical means provided by the English Constitution, through which assent or dissent can be expressed, and the will of the folk and people have utterance given to it, and the Law be declared and administered.

The whole body of any nation can never meet together. If it were able so to meet it could not deliberate, and so form and utter true opinions. Institutions must exist to meet this difficulty, and yet practically to realize the principles and ideas above laid down.

Three classes of functions, each equally responsible, must be called into activity in order to this end; some *original*, and actively lodged in every individual; others *representative*; and yet others *ministerial*. Each class finds its place in the English Constitution.

First; as to the *Original* functions:—

As no man, nor body of men, can foresee what may arise in the course of events, the election, at given times, of one or more to consider and agree to, in the place and stead of the whole, whatever may arise, is merely, if the system stop there, the most effectual means that could be devised of neutralizing, under the disguise of names and forms, the fundamental principles of the Constitution and of free Institutions, and of setting up the caprice and interest of an Oligarchy, to rule in place of the will of the folk and people.

It is only by the individuals forming the folk and people having, themselves, the actual personal opportunity of discussing matters of public interest, that they can be able to form and utter sound opinions upon those matters; and so be able, either to elect representatives to express and

carry out their will, or, in any other way that circumstances admit of, themselves declare what the law is, or administer it. And it must ever be matters of daily watchfulness, far more than those of occasional political excitement, that affect the true political and social welfare of the people.

The Constitution of England has fully provided for all these emergencies. It has done so by the system which has been termed, to express the idea in a short phrase, the system of *Local Self-Government*. This system provides fully for attaining both parts of that which is the fundamental rule of the English Constitution, the corollary of the principles and ideas above mentioned,—namely, that *All Law must spring from the people, and be administered by the people*. Whether or not any scheme or proposition serve to aid in the practical realization of either branch of this rule, or whether it infringes it, must always form the sure, and it will be the only, test of whether or not it is *constitutional*.

The system of local self-government provides for regular, fixed, frequent, and accessible meetings together of the folk and people themselves; at which all matters of common interest shall be deliberated and administered; and by means of which true and sound discussion shall take place; and so real and healthy judgments be formed and recorded.

Circumstances originally determined, and must always determine, the particular Local Associated Groups. A wider-spread and rural community, having some original circumstances of connection, formed a *shire*; a closer-dwelling and mercantile community, a *city* or *borough*. These two sorts of groups stood, and must stand, in sound reason and in law, in an equivalent position: a principle which ought never to be infringed upon, though it has seriously been so in later times.

But even these divisions would form bodies too numerous (and, as to the shires, too widely scattered) to assemble, easily and usefully, very often. Each was again subdivided, in order to attain the great and all-important objects sought. The shires were divided into Hundreds; the cities and boroughs into Wards. Every facility is thus afforded for

frequent and convenient meetings, in numbers not too great to have a true deliberative character.

This system of Local Self-Government cannot be further detailed now, in any of its manifestations; nor can its important and necessary social and moral influences be dwelt on, as the only but sure means of maintaining independence, self-reliance, and social charity among all classes, and as the simple but effectual and only true means of political and social Education.

This brief outline will, however, make it clear that the system provided by the English Constitution is a system which is adapted to every and any stage of civilization; its value and practicability in fact increasing with every advance of civilization and enlightenment; to both of which its own activity will, again, most surely contribute. It must be reserved to a later chapter to show how this system has been and is being gradually usurped upon, in both its modes of operation, by the system of Centralization;—a system as fatal to social prosperity as it is wholly antagonistic to the fundamental principles of the English Constitution.

The institution of *Trial by Jury* forms one, but a highly important, practical application of the system of Local Self-Government:—that by which law is *administered by the people*. Hence, like every other form of manifestation of local self-government, it has become, in our time, the object of the insidious attacks of the strivers after centralization.

The bastard county courts of recent enactment must not be confounded with this constitutional system; they afford but another instance of the employment of a name to smother a reality: neither must the proposition, in the shape it has taken, for county representative boards; the proposition for which latter, as put forth, violates every sound principle, and is wanting in the essential characteristics of true institutions of local self-government.

Next, as to the *Representative* functions.

All the wards, as did all the hundreds, formerly met together in full shire and borough folk-mote at certain times. In the

case of cities and boroughs, where there are matters of continual care needed, individuals were often chosen, by each ward, to meet, and act together for the whole, in common council. And it was the same, under certain circumstances, in the hundreds. This is a true representative system. The representatives have the honourable trust of carrying out the soundly-formed and truly-ascertained wishes of their constituents; but can never degenerate, under such a system, into oligarchies and cliques.

And this brings us, at last, to Parliament. Parliament has, and can have, no original authority of its own. It is a result, and not a source. Its authority is not, like that of the folk and people, self-derived and inherent. No doctrine can be more self-evidently absurd than that of such original authority; while the implication of it is the true ground-work of centralization. There are institutions in this country far more fundamental than Parliament itself. The latter exists only as derived from the folk and people of the realm, and as the result of the working of the institutions of Local Self-Government. On the full and perfect working of the latter must always depend the lawful character of the former, and the constitutional character of all and any of its acts. The true limits of its functions are clear, and easily defined. They can reach to no matters of local supervision, control, or administration. Matters of common concern, and of external relations, constitute the sphere of its action.

As town councils are the representatives entrusted to carry into execution, as to all local affairs, the wants and wishes of the majority of the burgesses, ascertained by means of the several ward-motes,—so Parliament is composed of the assembled representatives of all the several Local Associated Groups (shires, cities, and boroughs) throughout the land, and so truly represents, *when all those institutions of Local Self-Government are in full and vigorous activity*, the wants and wishes, as to all national affairs, of the majority of the folk and people of the realm. It is the crowning piece of the whole system. But if this sole source of the authority of Parliament is

forgotten, and if the functions which thence alone belong to it are overstepped,—though it is impossible in this sketch to point out, in detail, what these latter are, and what are their essential limitations,—its acts are as much a violation of the Constitution, and as much an usurpation, as would be the assumption of arbitrary power in the hands of any one person. It can only be kept within those functions by the full and true activity of that system of local self-government whose nature has been indicated.

Thirdly; as to the *Ministerial* functions.

As there are representative functions both local and general, so are there ministerial. In every case of the latter the functionary owes his position, according to the principles of the Constitution,—and long, also, according to its practice in every instance,—to the free and immediate choice of the folk and people. The Tything-man is ministerial head of the tything; the Hundred-man, of the hundred; the Head-borough, Borough-reeve, Port-reeve, or Mayor, of the borough or city; the Sheriff, of the Shire; and the King, of the whole state. The same idea and character of functions belong to each,—the special functions varying according to the extent and nature of the special office. But, in each, the functions are, constitutionally speaking, and apart from usurpation and encroachment, strictly and simply ministerial, and exist solely for the purpose of carrying out, the more effectually, the soundly-formed and lawfully-expressed will of the folk and people.

This sketch of the English Constitution will suffice for the present purpose. Later chapters will afford illustrations of each point, and show wherein any of these constitutional principles have been, and how successfully, sought to be encroached upon, and what has been, and is, the mischief thence arising.

One other point should be stated. It has been already remarked that the English Constitution affords the fullest scope for the introduction of all and any improvements which can be devised for the promotion of social, moral, or poli-

tical welfare. The foregoing sketch will make it clear how all and any such matters may be most fully discussed, considered, and adopted when determined on. No such matters, thus discussed, considered, and adopted, can ever endanger the foundations or principles of the Constitution itself.* They will, on the contrary, be the healthy fruits springing from its well-maintained trunk and shelter-giving branches. But, inasmuch as the felt permanence of Law, and therefore of all matters of general or special regulation, is of the highest importance, as already shown, to individual enterprise, social well-being, and national prosperity, the whole genius of the Constitution requires that every new proposition shall undergo the ordeal of the fullest discussion, and have its truth and value tested in every way, before it can be adopted; a proceeding the very reverse of what takes place under the system of Centralization. Thus is every moral probability ensured that only what is truly good and valuable, and felt to be so by the great majority, will be adopted. And until it is,—after such tests,—adopted, the new proposition is not to be treated as standing on an equal footing with actually existing and established Law, but only as matter thrown out for discussion. This sound principle is curiously illustrated by the old rules of the House of Commons; under which, when a division took place on any new motion, those who supported the motion, be their numbers small or great, were those who were bound to withdraw, "for that they are for an innovation and to bring in a new law. And the rule is, that those that are for innovation or alteration of that which, by presumption, is well enough,—until it be actually resolved to the contrary,—ought to undergo the trouble and disadvantage, if it be any, of going forth when the house is divided upon such a question."†

* See "Government by Commissions," p. 36 & 37.

† Glanville's "Reports of Cases adjudged by the Commons in Parliament, in the 21st & 22nd years of King James I.," pp. 5 & 6.

CHAPTER II.

LOCAL SELF-GOVERNMENT.

It is well said by one who wrote on the Laws of England six hundred years ago, that "the Laws of England having been approved by the consent of *those who use them* [utentium], and guaranteed by the oath of the king, cannot be changed nor set aside without the *common consent and counsel of all those by whose counsel and consent* they were first put forth."* While some of these, whether matters of taxation or otherwise, are thus put forth "by the *common consent* of the *whole realm*,"† relating as they do to matters in which the whole realm has a common interest, "there are also many and varying customs in England according to the difference of places; as in different shires, cities, boroughs, and vills, *at which places themselves* it must always be sought and learned [inquirendum] what is the custom of that place, and how such customs are applied."‡

How is that common counsel to be taken, and that common consent to be given? And how are the different usages springing from the varying conditions of different places to be sought and learned?

The life and spirit of free Institutions must depend wholly upon the consciousness of their reality. That consciousness can only spring from constant personal experience. Representative Institutions can never be a reality, or other than a mask and disguise under which to work the more safely the

* Bracton de Legibus, Lib. i. ch. 2, § 7.
† Ib., Lib. ii. ch. 16, § 8.
‡ Ib., Lib. i. ch. 1, § 2.

purposes of an oligarchy or a despotism, unless those who are pretended to be represented enjoy full means of forming, and expressing, sound opinions upon the matters entrusted to their representatives to administer. The wholesome adjustment of practical arrangements suited to the exigencies of the times, and the satisfactory management of administrative functions, must depend upon the vital activity of Institutions which give to every freeman the full opportunity of discussing, and hearing discussed, all the questions which, directly or indirectly, concern him. The course and conduct must be laid before him, immediately, and for consideration by him—and not merely in the way of passive *information*—of those who represent him, either in the Common Council of the whole Realm, or in the Common Council of the narrower circle within which the especial interests of his locality are confined.

It has, accordingly, been the universal Law and Practice of this country, of old time, for the folk and people to meet in frequent, fixed, regular, and conveniently arranged assemblies, for the purpose of understanding, and discussing together, and determining upon, all those matters which have regard to the welfare of the separate associated bodies, and to the common interest of the whole realm.

The *name* of free Institutions may exist; national and local "representative" assemblies may exist; a theoretical constitution, full of liberal pretences, may exist; a so-called free press may exist; nay, universal suffrage may exist: but, unless there be the general and active and unshackled means of discussion and free utterance by all the freemen, free Institutions have no reality; law and liberty and property have no assured securities; and the government will be merely a despotism, more or less oppressive according to the personal temper of those who hold the reins of power, and more or less artfully disguised according as they have more or less moral and physical courage.

The difference between free institutions and despotic governments is simply the difference between men taking care

of their own affairs, and submitting to have their affairs taken care of, for them, by others. Between a bureaucracy and an individual despotism there is no difference in principle. Each is equally fatal to liberty and human progress, and to the development of every generous and elevated aspiration and effort; but a bureaucracy is the more really dangerous to human freedom, because it may be more speciously disguised under the names and forms* of a free constitution, and so, by blinding the people for a time to the reality, the more insidiously and effectually do its work; and because, also, a host, made self-interested in the maintenance of wrong, and in the violation of the rights and liberties of their fellows, is far more difficult to be dispersed, even when its true character becomes understood, than is a single despot or a few. Hence the bureaucratic system is that to which the enemies of human freedom have invariably had recourse in modern times.

Let it be granted that Representative Assemblies exist to administer all matters of common interest, whether to local districts or to the whole realm, and all foreign relations. It will yet be self-evident that it is not by instinct that men are able to form a proper judgment as to the qualifications or acts of their representatives. Such judgment, and the experience necessary to it, can never be got in any other way than by habitual and free discussion on similar classes of subjects among those who feel that they have an immediate interest in the result. It is by the habit and experience of understanding, and helping to manage, their own affairs and the affairs of their own district, that men can alone have their minds so trained as to be able to judge of the mode in which their representatives in Parliament, or in the narrower local Council, ought to, and do, manage the affairs of the

* A writer early in the 17th century describes these forms and names in the following admirable phrase: "Plebi quoque, libertatis aliquam quasi *larvam* relinquit."—*Russia seu Moscovia itemque Tataria Commentario Topographico atque politico illustratæ. Lugd. Bat.* [*Elzivir*] 1630. p. 79.

nation, the shire, or the borough. It is by the independence of thought and conduct to be only acquired by the habit of being continually called on to express an opinion upon, and to take an active part in, the management of the affairs of their own district, that men can alone ever be really fit to elect representatives either to Parliament or the local Council, or to form sound and respect-worthy opinions on the conduct of such representatives.

And those who, from any motives, whether of personal ease, engrossing pursuits, or the pretended difficulty of great national or international questions,—would treat as inconvenient and impractical the full and real active vitality of the Institutions by which only these results are to be obtained, are placed in a dilemma from which neither Fact nor Logic will give them any escape. Either let them deny, at once, and in a manly and straightforward way, that England is a free country,—that what is for the common good must be done by the "Common Consent of the whole realm;" let them, in short, set themselves up against every point and article which the Fundamental Law and Constitution of this realm have affirmed and practically insisted on for ages;—and let them declare that what they call a Representative Government is only meant as a trick and a toy to delude and amuse grown children;—or, abandoning their objections, they must at once admit, and, if honest, practically aid in carrying the admission out, that the more opportunities men have of understanding and of knowing thoroughly that on which the Law and the Constitution require that they should have, and should pronounce, an opinion of their own, and the more they shall thus be able to understand the opinions expressed by others, and the reasons of those opinions, the better; and that the wisest and most statesmanlike policy is that which the most effectually tends to make it a part of the habitual business, and regular and unevadeable duty, of every freeman so to know and understand, and to give utterance to opinion.

It is a truth of which the mere statement carries its own demonstration, that his own affairs must always be best

known to every man himself; that his own interest in their good management is the strongest; and that he must himself the soonest learn those lessons of good management which success and failure alone can teach. It is necessarily the same, by an ascending step, as to every special district, and the affairs which concern, in common, all who dwell within it. And the step is but a further ascending one as to the whole nation, and the affairs which concern, in common, the whole people.

Free institutions do not, then, exist, and national independence can never be ensured, nor individual independence and forethought ever characterize a people, unless true local self-government is fully and freely exercised in every district throughout the land; unshackled alike by local clique-ism and by central intermeddling. The exercise of that local self-government must be entirely in the hands of the district as to all matters of general management, police, public works, taxation, and every class of administrative arrangement whereon the common welfare of a local community depends. No interference by any central authority can be permitted without a necessarily consequent sacrifice of independence, self-reliance, and efficiency. These truths are logical necessities; and it is a mark of the empirical mode in which political subjects are too often now handled, that some men, professing to see the importance of local self-government, will gravely argue for a central control over some or other point of local management. It can never be matter of surprise that men seeking to impose schemes of their own upon the public, should strive to shackle local self-government, and to impose control over this or that special matter. But such a proposition can never be consistently put forth by any disinterested man, or honest government. A man who is unable to take care of his own affairs is deserving only of pity as an imbecile. A town or district which is unable to manage its own local affairs—being unshackled in the exercise of that management—is an impossibility, as imbecility can never affect a whole district. No central authority can ever, by any possible human machinery, know,—as the inhabitants must always do,—the circumstances

and conditions of a district, and so know how its affairs may be best managed. To speak of such control being a "protection" is a contradiction in terms. It can never be other than a shackle only. Where true local self-government exists, it is necessarily self-protective; and that *Self-Protection* is the only sure protection,—but it is unfailing.

"Local jobbing," and the influence of "local interests," are often held up as bugbears. But each of these, wherever it be found, exists, and only ever can exist, because true Local Self-Government is not there found; because the discussion and management of matters is practically left in the hands of a Local clique or oligarchy,—under the form and name, it may be, of a Town Council or otherwise, but without the practical activity of that other part of the Local Institutions which the spirit, the letter, and the long practice of the common Law and Constitution of England require, namely, the Folk and People themselves meeting in frequent, fixed, regular, and accessible assemblies, as matter of individual right and duty, and discussing, and hearing discussed, the matters which the local body, entrusted to administer in their behalf, has done or is doing. Without this, whatever the name of the Local body having authority may be, its reality will always be a clique, in which individual interests will, of course, be more likely to sway and to prevail than the common good of the whole neighbourhood. But a centralized interference or control can only increase this evil, and the tendency to it. It may, sometimes, change the special direction which it takes; but it can never cut it out, nor tend in any way to lessen it.

The primary fundamental principle, then, of true Free Institutions is,—that *All local affairs, of common interest, shall be administered and controlled by true practical Institutions of Local Self-Government;—general affairs, affecting the common good of the several Institutions of Local Self-Government, being those only with the administration of which the General Assembly of representatives for all those Institutions of Local Self-Government has concern.*

The only object for which Political Society can exist at all, to be binding on the moral sense, and to have any claim on the allegiance, of any of its members, is that, by its means, the fullest scope may be given to the healthy development of the faculties of every one of those members. Every check to that development, and every institution which does not help it, is treason against the state, and an obstruction thrown in the way of the very ends of Political Society.

In considering the form and practical working, then, of any Political or Social Institutions, two maxims must be ever foremost:—the one social and political; which is, that freemen can only consent to have their affairs managed and disputes settled, by themselves as freemen; least of all can they submit to be dictated to on either point by those set over them, not by their own choice, but by some assumed independent authority: the other logical; which is, that the more minds are directed to the consideration of a subject, and the more habituated they are to the consideration of kindred subjects, the more will its different aspects be brought out; and, therefore, the more likelihood is there of the very truth being got at,—or "boulted out," as Fortescue's old translator well expresses it.* These two maxims have been practically recognized and applied from the earliest times in England. The wise policy of the Common Law has always been, to throw on every man the duty, and the high responsibility, of considering, expressing an opinion upon, and helping to carry out, every question in which he is interested, nearly or remotely, as a member of the body politic.

Society has a claim on every one of its members. The more that claim is practically felt the better. This only is true liberty:—that all men shall feel that to every man there attach, by the fact of his being a free man, co-extensive and inseparable rights and responsibilities; which he cannot begin to separate, nor neglect, without sacrificing the title of freeman, with all that appertains to it. Not by having our

* De Laudibus Legum Angliæ, ch. 24, Translation, 1672.

affairs well managed *for* us, by others, are we, or can we ever be, free, or maintain free Institutions; but by having the ever-present consciousness that it is to us ourselves that the right and the responsibility belong of doing, and doing well, what the common welfare, or our own, demands.

These are the noble and manly principles which the system of true Local Self-Government cherishes and practically realizes. That system brings it constantly home to the contemplation and the practice of every man, that the State is made up of individuals, of whom every one has his part to fulfil. The practical idea, and the result, of Centralization, on the other hand, is,—that the State is something apart from its members; and that it has the function, and the right, to keep each and all of those members within a certain tether, the length of which it belongs to it to determine, and on which no right nor responsibility of judging belongs to them.

No Government of a free Country can discharge its legitimate functions except while watching, in a thoroughly responsible capacity, that no artificial shackles or hindrances are imposed, or grow up, in the way of free and unfettered individual enterprise and skill and self-exertion, and of the full play of the natural motives which develope these. Whatever its power, it betrays its trust, and becomes a mere mischievous usurpation, when, either directly or indirectly, it is party to the placing of any checks or hindrances in the way of such free and unfettered individual enterprize and skill and self-exertion, or to any measures which can tend to dwarf or stifle the natural motives which develope these. Such checks and hindrances, and the dwarfing and stifling of these motives, are, however speciously disguised, the demonstrably necessary results of every step, direct or indirect, in the path of Centralization.

Some persons think they show great loyalty by declaring the wish not to meddle with the discharge of their duties by "the authorities." In so doing they but proclaim themselves unconscious of the responsibilities and the self-respect of freemen, and unable to understand the foundations of Free

Institutions. It is the first duty and responsibility of freemen to see, in each existing authority, but the reflection of themselves, deposited in the shape of as few unities as conveniently may be for the sake of administrative vigour; but which can only be a truth and a reality, and worthily command respect, so long as it is truly that reflection. Unless the original is sound and wholesome, the reflection, or what should be such,—ceasing also to be sound, or to be any reflection at all,—becomes, necessarily, something independent and apart, and no longer a legitimate existence in a free state. Each man is bound, as his highest duty, therefore, if on this ground alone, constantly to watch, and express an opinion upon, the conduct of those entrusted by him and his fellows with any authoritative functions, in order that he may see and know that the reality is preserved, and that he, being whole and sound himself, shall have, in all entrusted with authority for the common good, a whole and sound and true reflection.

All local associated groups exist for various purposes. Their existence depends upon the principle, already explained, that the management of all affairs in which a number of persons have a special common interest should be in the hands of those persons themselves, and without liability, as to those affairs, to external dictation or intermeddling. But in one age it is perceived that certain special objects demand a foremost place in this category: in another, that different and perhaps additional objects demand an equal place. To attempt, in any one age, to tie down Institutions of Local Self-Government to certain definitive and peculiar tasks,—still more, to attempt to tie them down to the fulfilment of any of these in a particular way,—does but betray the grossest ignorance of human nature and of the foundations of social and political union. It is what the Common Law and the Constitution of England never have attempted to do, though empirical pretenders in modern legislation have oftentimes done their best in this direction,—with the necessary result of leading to mischief instead of good.

Local Self-Government does not then consist, as many imagine, in having local bodies, elected or otherwise, and leaving the exclusive management of everything in their hands. Its essence consists in this:—that, while these local representative assemblies exist, like the national one, for the more convenient administration of affairs, arrangements also exist by which regular, fixed, frequent, and accessible meetings together of the freemen themselves shall take place; at which all matters done by the representative bodies, local and general, shall be laid before the folk and people, discussed, and approved or disapproved; and at which all matters of common interest to the respective associated communities, either as separate bodies, or as parts of the great national whole, shall be brought forward, and fully canvassed and considered; and, having undergone this process, the public opinion thereupon shall be truly, peaceably, and healthily expressed.

It will immediately be perceived how such a system,—so simple but so complete,—differs from the empty shouts of crowded thousands, throwing up the cap at popular platform oratory; which is, in reality, but one, and not the least dangerous, of the shapes under which Centralization seeks to obtain her hidden purposes.

The high and ennobling sense of duty and responsibility begotten and cherished by Local Self-Government is, moreover, altogether different, both in character and results, from what takes place when a Government which has assumed to intermeddle and to dictate with respect to matters which it never ought to have touched, talks, after failure and discontent have marked its course, and in order to escape from the dilemma in which it finds itself, of how the people ought to rely upon their own resources.

The following were laid down, more than 200 years ago, as the axioms on which a free state must be maintained. Though without that definite shape and connected completeness of idea being given to them which has been above explained; and which gives reality and practicalness to what otherwise may be treated as the dream of a closet theorist,

they are evidences of a strong consciousness of what is alone consistent with the maintenance of Free Institutions.

"*Rules or Axioms.*

"In public assemblies and consultations, about matters of State, creating of Magistrates, public justice, and exercise of arms, to practise the contrary to the former kind of government—to wit, an Oligarchy. For, in popular States, the Commons and meaner sort are to be drawn to those assemblies, magistracies, offices, warlike exercises, &c., by mulcts and rewards.

"To elect magistrates from among the Commons; and not to choose any for their wealth's sake.

"To compel magistrates, when their time expireth, to give an account of their behaviour and government; and that publicly, before the Commons.

"To make judges of all matters out of all sorts; so they have some aptness to perform that duty."*

The importance of the subject, and the little degree in which it is thoroughly understood, have seemed to require thus much general consideration of the spirit and true principles of Local Self-Government. It will be well now to call attention, more specifically, to a few of the practical consequences of the activity of such a system on the state of society and of individuals, considered in their Political, Social, Moral, and Intellectual conditions and relations.

And first; of the practical results *Politically*.

It is by the full activity of Institutions of true local Self-Government that it is alone possible that matters, whether of local or of general interest, shall be well and thoroughly understood; and so meet with the prompt and decided expression of sound, well-formed, and not ever-fluctuating opinion.

By their activity alone can be ensured that jealous watch

* The Prince; or Maxims of State. Written by Sir Walter Rawley, and presented to Prince Henry. London, 1642. p. 32.

over the encroachments of all entrusted with the special management of affairs, whether local or general, which is necessary to prevent the gradual usurpation of arbitrary power, and a violation of the fundamental principles of the Constitution.

As the efficient carrying out of matters of local interest can be thus alone ensured, and the mode of dealing with them understood, so in this manner only can the minds of all be prepared to understand and deal with affairs of wider interest. It is the strongest security against violence and outbreak that, by these institutions, opportunity is given for legitimately and peaceably expressing the true national will. Thus is prevented the adoption of measures on hasty views, partial interests, or one-sided grounds; and which are justly calculated to excite dissatisfaction and discontent. It is the peculiar characteristic, indeed, of Local Self-Government, truly carried out, that it ensures that every proposition, before being adopted, shall be really inquired into, discussed, and thoroughly understood, and not any crude scheme be hastily brought forward or hastily adopted.

Wherever local self-government prevails, there is the best security which human institutions can afford that nothing will be done rashly, or on insufficient premises. The interests, immediate and direct, of all the body are concerned in every proposition. There are always the more sides to a question the more extensive are the interests involved. Hence is it the more necessary to have many different minds directed to all such questions. Varying as does the human mind in the activity of its powers in different individuals, a question submitted to the consideration of several,—opportunity for its calm discussion being truly given,—is infinitely more likely to be decided rightly than where decided by one or two only, or nominally submitted to the assent of an uninformed occasional gathering.

Prejudice or self-conceit has less chance than under any other system. At the same time, the energy of individuals will always have the opportunity of urging forward any sug-

gestions the adoption of which may be for their own and for the common good.*

It is another matter of great importance that, under a system of true Local Self-Government, the actual true and the actual best must, of necessity, in the end prevail. Human nature not being perfect, it will often happen that, however many minds are given to broad questions, error or prejudice will interfere to hinder for a time the reaching of the goal; though it is impossible that these can thus interfere so much, or so often, as where the arbitrary will of one or a few is supreme. But no sooner has a course of action followed, than, all being conscious of the rights and responsibilities which are theirs, all are awake to watch the results. The matter is discussed and re-discussed; and, in the end, the true goal is reached. The fuller and freer the opportunities of thus exercising the energies of each individual, in other words the more real and vital the system of Local Self-Government, the sooner and the clearer will the truest and best interests of all be understood and carried out.

No antagonism will ever arise between the action of these Institutions of primary Local Self-Government, whereat the Folk and People are wont to meet and discuss, and those secondary Institutions where the Representatives, either local or national, meet and discuss. In the latter the Representatives are simply appointed,—unless it be admitted that Representation is but a trick and a disguise,—the more promptly and effectively to collect and carry out the will of the folk and people. It is clear that the more certain and definitive the means of knowing what that will is, the more prompt and efficient will be the discharge of the very functions which alone render such bodies of any value, or even admissible by a free people. When, by means of regular, fixed, frequent, and accessible meetings together of the freemen, every subject that arises meets with early discussion, the temper of the place or nation will be so well known

* See "Government by Commissions," p. 171, and following.

that energetic means will, with little hesitation, be taken to carry it out to practical results. What is thus devised by the representative body will, without delay, come before the same meetings, and have the prompt expression of their approval or disapproval. The opinions and reasonings of the really thoughtful and experienced, uttered in the representative assemblies, will only then have their full weight on the represented when men feel conscious of the duty and responsibility which lie on them to discuss and decide according to the best opinions and reasonings, and when they have, themselves, that practical experience which enables them truly to appreciate such opinions and reasonings. And representatives will then, also, be well aware that their reasons and deeds will be canvassed by really practical and truly educated men.

As to the sometimes alleged "inconvenience" of such frequent meetings, the answer is simple, but conclusive. Freedom, to be had, must be maintained. If it is worth having, it is worth the exertion needful for its maintenance. As the most valuable inheritance that can be held, it is certain that no honest man will ever object to bestow the needful time and attention upon understanding and discussing what are the merits of any special question, so as to form and express an independent opinion in a manner consistent with his various interests and those of his fellows.

It is well worthy of remark here, that it is not the mass of the folk and people that are insensible to sound argument and reason. This is a charge often made by those who imagine themselves superior to their neighbours. The truth is, however, that the most really ignorant classes, and the most incapable of comprehending sound argument and reason, are often found to be those which are commonly called the educated classes. The cause of this is very simple. What is now called "education," and what many are anxious to enforce by a national system, is nothing but putting a certain artificial mould upon the mind, which, instead of developing its powers, does but serve to wrap it in prejudices, and bind

it to conventionalisms. The artizan classes, at least equally called upon by external circumstances to exercise the native powers of mind, have fewer prejudices to block the way to the sober entertainment of argument and reason.

There will, unquestionably, always be some who, inglorious and easy, forget that self-government is the noblest birthright and highest duty of a freeman, in the *convenience* of having others to defend and rule them. But the precept to "do unto others as we would be done by" is the law no less of political morality than of Christianity. It is this law upon which institutions of Local Self-Government rest. He who hesitates to take an active personal part in the affairs and the meetings of his district, while he shows himself utterly unworthy to enjoy the benefits which national unity and a civilized community yield, neglects the discharge of his duty to himself, his family, his country, and therefore to his God. His conduct shows that self, and immediate personal gratification and ease, are the main objects of his life; and that his neighbour's welfare, and his children's, and his country's, are held of less account than these. And whatever cheap benevolence or sentimental philanthropy he may profess, or pay a pecuniary commutation for, that only true beneficence and philanthropy which consist in active, personal, unbought exertion, stimulated by a sense of public duty, and which can never be done by deputy or satisfied by a subscription list, are strangers to his character and life. By men of such temper free institutions can never be understood and will never be maintained.

As to the sacrifice of time required,—little actual time, under such a regular and periodical arrangement as forms an essential part of the system, will be taken up. The very basis of the system, practically speaking, has been shown to be, the having arrangements for meetings so accessible, and to consist of such numbers, that there may be real earnest discussion,—and not mere idle platform displays by a few, while the crowd are gaping listeners.

But, were the call on time much greater than it need be, is

time so spent too great a price to pay for freedom? If so, freedom can be little understood or valued. It would, assuredly, be no hindrance to the welfare of society if some slight check were thus interposed in the headlong race of hurrying competition;—if men gave a few hours to the practical recognition that they were brethren and neighbours to their fellow-men, having many interests in common, instead of giving all their time to the hungry contention for individual aggrandizement. And any objection which can be raised on this score will apply with at least equal force to that wholesome institution by which one day in seven is now set apart, and to a great degree unquestionably kept in this country, as a day for the consideration of interests and duties above and beyond those of mere self. If respect for that part of the great commandment which bids us love God, claims one day in seven,—surely that other part of the same commandment, "which is like unto it," and bids us love our neighbours as ourselves, may claim, if need be, even one day in twenty-eight.

True Institutions of Local Self-Government are the effectual, and only, security against Revolutionary dangers.

As many minds as possible being engaged, having the most means of knowing every condition of the circumstances to which any proposition applies, and with the greatest practical interest in seeing the best applications carried out, the result is necessarily a state of steady and certain progress. The sharers in these Institutions have not a sudden and transitory call, on some particular occasion, to decide on some special matter only; which they are ill prepared, from habit and experience, rightly to discuss. The appeal to their judgment and reason is habitual. And it is thus habitually made upon matters which concern them from day to day. The interest in that class of matters is ever present and continually growing. When any want is felt, it finds immediate expression; and every mind is interested in satisfying that want in the promptest and best manner. Hence continual steady progress is ensured. No revolutionary violence is ever needed.

None of that unhealthy system of "pressure from without" which has of late been so much used to act on Governments, and which may now, indeed, be considered to be invited by them, is needed when true Local Self-Government exists. Such "pressure from without" is generally artificial, always suspicious, never healthy. Local Self-Government gives the constant opportunity for the lawful and peaceable uttering of true and soundly-formed Public Opinion on every question that arises.

It is important to remark as not unconnected with the last point, that Local Self-Government puts an end to Demagogism. Where all men have the practical education and experience which such a system gives, the clap-trap of the demagogue will be treated only with the contempt which it deserves. Sound argument and practical good sense will alone be listened to. No empty appeals to passion, prejudice, or malice will serve as a stock in trade of political capital. "The specious pretences" it has been well said, "that have excited common people to join in arms, are ever religion, the violating of the public liberty, the failing of justice; which, as they are the most fair pretexts imaginable, so have they been the covers to the most damnable wickedness that ever was practised."* When men have the constant consciousness of their own rights and responsibilities, and discuss and control, for themselves, concerning all and each of these things, these pretexts can no longer be artfully used; nor will, therefore, the "damnable wickedness" perpetrated in their name be hazarded.

It has been justly remarked, often, that, in the present political condition of this country, the existence of small boroughs is almost an essential means of getting into public life some of the most useful public men. But this gross violation of Constitutional and Representative Principle has only become necessary through the killing out, within a comparatively short time, of the true active efficiency of Institu-

* Twysden, "Certaine Considerations," p. 99.

tions of Local Self-Government. Without stopping to criticize any proposition for giving to some undiscoverable best man the power to select all the other best men,—equally undiscoverable by any means suggested,—it is sufficient to say that true Institutions of Local Self-Government supply immediate and perfect means, and the only means, both of thoroughly developing the powers and faculties of every man,—and so most truly educating all for the discharge of public duties,—and also of making those who have the greatest aptitude for the discharge of any special administrative or ministerial functions known to and appreciated by their fellow freemen.

It is not merely that these Institutions give expertness in public affairs. The main point is that men will not, when obliged to bestir themselves in self-government, be content longer to live on traditions and "authority," instead of on true opinions and realities; nor will they, so, when they find out,—as find out they always, sooner or later, must,—that such traditions are a sham, burst forth into irregular excesses, or give way to feverish and dangerous discontent. Every man, under such true and active Institutions, necessarily feels that he himself is individually and personally an item in the state, and that he is so continually. He does not feel the mere swelling of a momentary conceit at the big words uttered by the flattering voice of some interested platform appealer to the vanity and passions of his hearers, but the manly sense of responsible personality becomes an habitual part of his existence, and tempers all his modes of thought and conduct. The mere occasional exercise of a franchise ever so extensive, can never supply the place of this. It can never produce this independence of character, or, to the thoughtful man, other than the humiliating reflection that he is being made the tool for the easier erection of a practically irresponsible oligarchy. Such Institutions as have been described will, on the other hand, produce the perpetual consciousness that the voice and opinion of every free man not only have a right to be heard, but will be heard;

that any truth which he may have found out has the immediate and lawful means of utterance; that his personal and local energies are not dependent on the favour and caprice of any irresponsible or distant body, which can know nothing of the circumstances, and which, however well-intentioned, can only be informed by partial views and one-sided representations.

Where local self-government does not exist in true activity, any man has a colour given him for covering over any nefarious design with the pretence of political grievance. But, where the opportunity of fully discussing every political event exists, this pretence is entirely cut away. Any man may freely express his opinions, and that in a mode which will have its due weight. The majority of the opinions so expressed will take a formal and positive shape. Real opinions will have been formed, on sound premises, and by sound means. There will thus be a real *public opinion*, legitimately expressed,—not a factitious one, got up for the occasion by means of platform oratory, or by manufactured *ex parte* "Reports" issued by interested "authority."

Finally;—the value of such Institutions being continually felt, all men will live in attachment to the Institutions of their country, and in respect for the laws which have such a continual and responsible sanction; instead of a large part living in mere gloomy submission, and sullen discontent, and a but smothered revolutionary temper. No rash changes will be morbidly sought after; no empirical panacea can mislead an ignorant multitude. A sound conservative spirit will be a part and parcel of every man's nature; conservative of the Laws and Institutions which are felt, in their daily applications, to be so valuable to him, and to afford the opportunity for the fullest development of real and healthy progress; conservative of the reality of vital *Institutions*, not of disguises which are a mockery of them; conservative of freedom and independence, not of mere names and forms.

Second: of the practical results *Socially*.

It will have been seen from what has been said that all the

meetings which take place under a true system of Local Self-Government are Public meetings of all the freemen of the neighbourhood. Nothing is done in the dark; but at meetings "whither all persons may resort, and in no chambers or other private places." * It cannot be necessary to dwell on the humanizing and kindly influences which must follow from the very fact of thus often meeting, to consult together, as freemen, about matters in which all have a common interest. It is sufficient to say that none can be driven, under such a system, to sit down and weep tears of blood, because they are poor and needy and there is no man who will hearken unto them. There will be the lawful folk-mote, to which, however poor and needy he may be, every man can go to tell what grievances he has, and be assured of finding sympathy.

Local self-government can nowhere exist and be called into constant and regular activity, and so be a reality and not a name, without in itself producing men able and willing to originate new and valuable enterprises. It is when men are thus assured that full scope will be given for fairly discussing any proposition which may be brought forward for the common good, that each man is encouraged to exert himself to the best of his power to contrive what improvements lie within the range of his knowledge. He may thus best attain the approbation of his neighbours, as well as a just reward for his own efforts.

True patriotism finds, in Local Self-Government, its constant nurse. That which serves so much to attach man to man, by the frequency with which all are brought into constant communication, is the strongest means of attaching all to the home and the institutions the value of which is thus daily realised. But it will not be the patriotism of narrow prejudice; but the patriotism which hails every freeman of every free land with gladness, and seeks to impart the same solid blessings to others which are enjoyed at home. It is the true love of freedom that is engendered; not the cling-

* Coke, 2 Inst. 103.

ing to privileges enjoyed by the few, and prized because they are exclusive.

It cannot be too clearly understood that Local Self-Government means the very reverse of the maintenance of any exclusive privileges by a few single cities or other places. It means the practical assertion by all, whether in towns or in the rural districts of shires, of the free and full exercise of all the rights of freemen, coupled with the consciousness of their inseparable responsibilities. It simply asserts the determination really, and not nominally only, to live as freemen; and to have institutions, in constant activity, by which those rights can be exercised, and those responsibilities discharged.

Local Self-Government does not serve to stir up class against class, and interest against interest, as it is the misfortune of all special political panaceas to do. It does not serve to stimulate a shopocracy against an aristocracy, tenants against landlords, artizans against manufacturers. It has the humanising effect, on the contrary, of producing, as a necessary result of its activity, a common feeling of neighbourhood and of united interests. It draws all classes nearer in kindliness and in daily life to one another, and teaches each man, practically, to do to others as he would be done by. It will not let the festering places of society lie hidden and unknown, concealed from view by the external glare and glitter of the more favoured classes. Each wrong necessarily becomes promptly known: and the deep-seated woes which, without it, ever and anon burst suddenly upon the sight, as from a till then still volcano, are seen and known ere they reach any height, and the needful remedy is at once applied. It makes every individual to be a man, in a higher sense than that of mere selfish strife. It makes each man to feel that he has a stake in the framework of society; a stake which he must maintain, both for his own sake and for the sake of all his fellows. It cherishes all the charities and kindly feelings; checks all purely selfish impulses; and makes every man conscious that there is truly something worth

living for and thinking of besides money-getting, and besides mere selfish gratification.

Local Self-Government produces a union of the interests and energies of all, for the sake of all, in matters of common interest to all, while each enjoys the full fruits of the exertion of his own self-depending energies, which are thus protected in the fullest field for their exercise. Herein lies the great and important distinction between such a wholesome system and those schemes which, based on the perception that everywhere there are some interests which men have in common, immediately jump to the conclusion that *all* interests will be best made to be in common; and thereby, instead of encouraging the development of individual energies and powers, take the surest steps to dull and deaden them.

It remains to be remarked that, when an honourable and useful sphere for each man's legitimate influence thus exists at home, whatever a man's rank and station, he will have every inducement to discharge his duties at home, and to seek to attach his neighbours to him; and will not think honour and dignity to be got by courses which are revolting to any true sense of self-respect and independence.

And the greater the increase in means of intercommunication, the more fully and beneficially, it is self-evident, will Local Self-Government be carried out. If it was efficient, as was unquestionably the case, while roads were rude and communication difficult, how much more so will it be when the former are admirable and the latter is easy and frequent. Not only will every man in every town feel the possession of a direct voice and interest in the state, but a healthy spirit of emulation will grow up between neighbouring towns. No improvement can be adopted in one without being immediately known in others; and, being known, it will not be long let pass without being adopted elsewhere by those who are thoroughly acquainted with the relative conditions, and how far, therefore, and with what modifications, it is adaptable. Every administrative officer, also, will not only know his duties, but know that there are, on every side of him, other towns equally

alive to the discharge of similar duties, and the condition of which his neighbours will be ready enough to hold up before him if he does not put forth his energies.

The points thus touched on relate to men in their collective capacities. Those which remain relate to men in their individual capacities. Local Self-Government may thus be considered,—

Thirdly: as to its practical results, *Morally*.

In what has been already said the spirit of Independence, of conscious duty and responsibility, of ennobling self-respect, of self-reliance, and of Charity, have so often been alluded to, as inseparable results of the vital activity of a system of true local self-government, that little needs be added. It is proper however to fix attention, separately and specifically, upon the point of the elevation of tone which will be given to every moral sentiment by a system of which unselfishness and conscious responsibility are the great characteristics. It is a system which will make every man feel that he is indeed a law-worth* man. And the system which requires constant meetings together, and taking counsel together after full discussion, is a system which, at the same time that it begets self-respect, begets also the invaluable moral qualities of self-control, forbearance, respect for others and for their opinions.

Men so trained will never submit to be the servile tools of any who seek to play upon their prejudices or passions. Nor will they ever descend to the humiliating work of going to others, whether parliaments or men in power, to crave from them the doing for them that which they have the power and means of doing for themselves. Any such suggestion will be spurned. Each will be ever ready to put his shoulder to the wheel for his own and for the common good. For it will be then learned and felt that the highest self-interest and the public good can never be antagonistic, but must always go together.

Lastly: of the practical results, *Intellectually*.

* See the true and high meaning of this word explained in "Government by Commissions," p. 329, &c.

Local Self-Government affords the only true Education. It is not schools and colleges that can ever give that education. They may be the means of imposing cramps and fetters on the mind; they may dull out half the faculties by giving undue exercise to others; they may drill into a lifeless routine of proprieties and conventionalisms; they may even impart what is called refinement and politeness; but they never are and never can be the means of training up to the great business of life. For that, a greater and a wider school is necessary,—the school of the active exercise of all the faculties in the earnest work of real life. Where that school exists, other schools and colleges may do, indeed, good service by conveying sound knowledge of the elements and applications of the laws and constitution of the country, and by imparting the rudiments of knowledge in those branches which will, in after-life, help the man the better to fulfil his duties and responsibilities. But the great instrument of drawing forth the powers of mind, and sharpening the wit in every useful way, will be the free schools of manly discussion and intercommunication which Institutions of Local Self-Government will keep always open and attended.

Both as to thought and action the faculties of man will have this as their best school: thought, inasmuch as full and free discussion is the best assurance for the activity and development of thought; action, inasmuch as what is best and most advantageous for all will be the object of constant endeavour, and not the fitting and trimming of the conduct to the dictation or caprice of a few.

Men cannot discuss without having first paid some attention to the subject matter of discussion. As long as everything is done *for* them they have no occasion to think at all, and will soon become incapable of thinking. But the moment they are thrown on their own resources, the moment self-reliance and self-dependence are made necessary to their existence, they wake from their torpor, put forth their energies, and rouse their faculties. It becomes necessary that they should act; and, to act, that they should think.

It must be remarked that a Public Press, however unshackled and ably conducted, never can supply the place, as a means of true and practical education, of Local Self-Government. However correct the information actually communicated, it is only *information*, and the reasoning upon it is but individual opinion. It does not supply that great sharpener of the intellect,—discussion.

When men have no public press, but have true Local Self-Government, all information is communicated and interchanged by that means, and so food for discussion is afforded. Liberty can, therefore, be full well maintained without a free press; while by a so-called free press, alone, liberty can never be maintained. On the other hand, a free press,—Institutions of Local Self-Government existing in full activity,—will be of far higher value than it is under any other condition of political society. It will afford valuable means of intercommunication, and thus for the more rapid development of thought and human progress.

The true character of Local Self-Government has been thus explained, and its practical value and importance shown.

It has been shown that the system of Local Self-Government makes complete provision for the political education of the people, so as to enable them healthily and soundly to form opinions; and further, and most importantly, it makes complete provision for the lawful expression of public opinion, so soundly formed. These ends are achieved, not by blindly giving up all authority and judgment, locally or nationally, to an oligarchy or a clique, although elected by universal suffrage; but they are achieved by making every man to feel that he has himself duties and responsibilities, co-extensive with his rights, in watching over the affairs of the Community, and seeing that those to whom any public functions are entrusted fulfil them.

It has been shown that, without Local Self-Government, all Political "reforms" must necessarily be, at the best, but vain delusions,—hollow, treacherous, resultless. It has been

shown that, without it, there can be no true Representative system, and that, though the name may abide, the reality will be gone, and the form be but a mockery and a snare, and the surest means of securing oligarchic sway. With Local Self-Government, there will be a progress real, constant, fruitful, humanizing. Men will feel that they are freemen; think and act as such; and know how to value, and how to use, that noble Constitution which their fathers maintained, but which has been too long silently slipping through the grasp.

The importance has been shown, to the assuring of truth, progress, and enterprise, of the regular opportunities of free information and discussion thus given, so entirely different from platform oratory or the procrustean pedantry of Centralization. And, while thus no artificial shackles are imposed on truth, progress, or enterprise, no wrong, real or imaginary, can go unsifted, and the best means of righting it will be immediately determined. It has been shown that this system affords the only but the sure means of healing that antagonism of classes which present political movements cherish and feed on, and of forming a bond of sympathy between high and low. The only effectual antidote will be thus afforded to that bitterness of spirit which weighs down many, and the effects of which all classes are now continually dreading. By Institutions of Local Self-Government, practically carried out as thus suggested, the legitimate wants of all will find wholesome expression; will be known to those who now know them not; and will, with an earnest sympathy, be grappled with ere they reach that head which leads men with the most benevolent intentions to propose schemes which can only, at the best, afford a temporary and apparent alleviation, without touching the root of the evil. Every man will know that the opportunity is freely given him of standing up before his fellows, and telling any grievance of his own or of his class, and asking the manly sympathy and generous aid of his fellow-men.

This system, it has been shown, will, in its practical vitality, lead to the realization among all of a living Faith in

their fellow-men and in the eternity of truth; of a steadfast Hope in the results of unshackled self-relying energy, and enterprise, and effort; and of an abiding Charity for all men, of whatever creed, or rank, or station they may be. We are told, on high authority, that there are Faith, Hope, and Charity; these three; but the greatest of these is Charity. Local Self-Government, as a practical system, can yield the only realization of Faith, Hope, and Charity. But if the greatest of these be Charity, then, truly, does Local Self-Government afford the noblest system of institutions ever devised by man for the happiness and welfare of mankind.

It has been shown that this system affords the highest and truest kind of education; not education administered by Inspectors and subjecting all to a state drill, but one truly deserving the name;—leading the people to understand their rights, duties, and responsibilities, and, so understanding, to fulfil them. Thus, and thus only, will men be truly freemen, and discharge their obligations as members of society.

From whatever point of view, then, we look at the subject,—political, social, moral, or intellectual,—the value and importance of that very groundwork of all our fundamental Laws and Institutions, the system of Local Self-Government, are clearly seen. They cannot be magnified. To every thinking man, who looks upon his fellow-men as made for something better than to be driven hither and thither as a herd of animals,—for something better than mere gold-finders,—for something better than mere material machines; who considers them as law-worth, and therefore as progressive beings,—as beings having rights and duties to fulfil, and social obligations to discharge, and minds to cultivate and enlarge; it must be evident that the only way in which those minds can be really enlarged, those obligations thoroughly discharged, those rights and duties well fulfilled, that progress actually ensured, the laws and institutions of the land maintained, and every man be truly law-worth, is by the realization, in full vigour and practical activity, of the system of true Local Self-Government.

CHAPTER III.

CENTRALIZATION.

THE fundamental idea of Centralization is, *distrust*. It puts no Faith in Man; believes not in Hope, nor in the everlastingness of Truth; and treats Charity as an idle word.

Its synonymes are, irresponsible control; meddling interference; and arbitrary taxation.

The system, and the results, of Local Self-Government have been so fully explained that it will be unnecessary to dwell at much length on that which is, on every point, its converse. And, as several forms which Centralization has assumed in England will have to be hereafter noticed, it will be enough, now, to glance at what will always be some of the practical results of the system, in the same order as was done in treating of Local Self-Government.

And first: of the practical results, *Politically*.

How Local Self-Government leads necessarily on, by its own inherent force, to steady Progress, has been shown. Under Centralization the forces always acting to this end are crushed out. Should it ever happen that the assumers of authority seek the good of others, instead of self-interest, it is a logical and physical impossibility that the true steps of progress can be taken. Whatever is done will be by fits and starts. The ground which alone can be fruitfully worked is kept untilled and barren. At length, some great and accumulated wrong, suddenly seen in its enormity, arouses a spirit of uncontrollable indignation,—the stronger because ignorant,—and a Revolution follows. And revolution may follow revolution; but, until Local Self-Government—the only

system which gives free men a place, and implants the consciousness of duties and responsibilities—has rooted out Centralization—the prop and means of despotism and tyranny—there can be no hope of lasting peace, a sound condition of society, or a steady progress. The minds and energies of those whose welfare is in question, instead of having been habitually roused, themselves to grapple with each want that rises, have been systematically dwarfed and deadened. Though the might of the people has been spasmodically asserted, the paroxysm soon subsides, and others step in, instead, either to order or to control the ordering.

To tie up all to the tether of the leading strings which its various irresponsible functionaries shall hold, and to guide all according to the crude pedantries of individuals, is the object, and the result, of Centralization. What the end is when, those leading strings once burst, unbridled fury and just indignation are poured upon the upholders of the system, the history of France supplies sad illustrations. The same history has been for some time assiduously weaving for England.

The earnest man, unshackled by the blighting influence of Centralization, will always know that steady perseverance and unswerving confidence in truth will be crowned with sure success. It is the man who is unearnest that seeks to gain his ends by means of Acts of Parliament, which shall enforce and control free thought and action.

Nominated by the usurped power of what should be a merely ministerial executive, and dependent on its pleasure, the functionaries who thus get themselves appointed, neither acknowledge nor have any responsibility to the nation, or to any part of it. The "reports" which they may, with officious parade, sometimes make public, instead of helping progress and truth forward, and putting their authors in a more responsible position, are merely a convenient means to disseminate manufactured evidence, the distorters of the truth, and always utterly untrustworthy. They but serve the further to blind and mislead those who have already ignobly

submitted to a degrading system. They are but some of the crafty devices by which the shackles are being continually the tighter fitted on.*

Centralization is only Communism in another form. Its object is, to take away the free action of every man over his own property; to stay the free use, by every man, of his own resources, his own ingenuity, and his own free action and enterprise. Universal obedience to the pedantic schemes of a few closet theorists, is proclaimed to be more conducive to human progress than the spreading of the truths wrought out by the ceaseless and multitudinous energy and enterprise of millions of active, thoughtful, and practical men, daily meeting, face to face, the difficulties to be overcome, and conscious of the responsibility that lies on them to grapple with and overcome them; and directly interested in attaining the best results. This is what Centralization really is, stripped of the disguises under which its advocates always seek to cover its natural repulsiveness. The empirical and undiscussed projects of interested individuals are enforced as law over the whole land, instead of that law which the folk and people shall have chosen by their own counsel and consent. Every man is permitted to do that only with his own property and powers of body and of mind which irresponsible officials may be pleased to let him.

By those who have usurped, or who are seeking to usurp, powers inconsistent with the rights and responsibilities of a free people, the machinery of Centralization will always be delighted in. To make stronger their hold on power, they thus spread, through all the ramifications of society, a system of bribery and corruption the most insidious and powerful; namely, the temptations of offices and appointments on which to live in ease at the expense of the public; and by means of which there shall exist, throughout all ranks, an army self-interested to uphold a corrupt and blighting system. Under such a system the functionaries, as it has been well said,

* See "Government by Commissions," p. 173-8, 232, &c.

"are not there for the benefit of the people, but the people for the benefit of the functionaries."* "A numerous body of civil functionaries," is created, "living upon the people for the performance of duties, partly useless, partly such as a people imbued with public spirit would discharge for themselves; and extending over them, in their private affairs and movements, a superintendence and interference which a people with any sense of liberty and personal rights would not tolerate."†

The consequences of Centralization are, then, the "crushing and brutalizing of every human soul." It goes about "prying, with suspicious inquisitive eyes and ears, into the most secret words, actions, and even thoughts; and repressing, with irresistible force and promptitude, any attempt of the human intellect and will to shoot forth as God and Nature intended them to do." The specious pretences put forth for its intermeddling are, in truth, but "dictated by vanity, fraud, and avarice;" and all the results achieved are "mere palliatives and works of ostentation, without striking at the root of any evil,"—the "wild schemes of projectors and adventurers, most of which, upon trial, have been found to be either pernicious or impracticable."‡

This system may be carried out under any of the forms which are pedantically reckoned as modes of government. Equally under the form of autocracy, aristocracy, or democracy, may centralization flourish; for neither of these

* Laing's "Observations on the Social and Political State of Europe, in 1848 and 1849," p. 184; a volume well deserving, throughout, of the most attentive perusal.

† Ib., 182.

‡ See the valuable and highly interesting collection of "Memoirs and Papers of Sir Andrew Mitchell, K.B.," Minister Plenipotentiary at the Court of Berlin; published under the able and judicious editorship of Mr. Bisset. (Chapman and Hall, 1850.) The above is the language in which the centralizing policy and conduct of Frederic (called "the great!") is characterized by one of the shrewdest of statesmen. See Preface, p. ix.; Vol. i. p. 133; Vol. ii. pp. 343, 345, 367; as well as many other places remarkably illustrative of this subject.

names is in itself any other than a form and a disguise. Under each name the freedom of the nation may be trampled down, and functionarism ride rampant over it. Examples have not been wanting of Centralization under each form, in Europe, in the first half of the 19th century. When Democracy, in the shape of universal suffrage, erects an oligarchy, the nation is, as has been seen in France, as much subjected to an irresponsible and burthensome yoke as if a Dictator ruled or an hereditary aristocracy governed.

Let the spirit of Centralization be once admitted, under whichever of these forms and names, and the true functions of government are departed from; meddling interference is carried into local and domestic details; the course of Law is disregarded and violated; and the interests of one class are sacrificed to those of another. Any misdeeds, neglects, or outrages are covered by the shield of government authority.* No responsibility anywhere exists, and no redress can be had; for at the same time that the right and responsibility of a free people to make the law, and assent to it, are taken away, the always co-extensive and equally essential right and responsibility to administer the Law are taken away too.

Compare the results of Local Self-Government with those of Centralization. The difference is, between a healthy and an unhealthy state of the social and national union; between that which ensures confidence to individuals, security to person and property, reliance upon self dependence, and encouragement to enterprise and energy,—and that which takes away all these, and leaves each prostrate at the feet of irresponsible authority. Centralization, however small its inroads, will, just so far as it has gone, give rise to a sense of insecurity and uncertainty among all thinking men; to vexatious interference with personal and private rights; and to capricious restraints on enterprise and energy. Its constant tendency must always be to breed discontent and irritation, and to beget and foster dangerous, however for a time silent, tendencies to the disorganization of society.

* See "Government by Commissions," p. 255, 315, &c.

Second; as to the practical results, *Socially*.

It has been shown that Local Self-Government affords so many nurseries where a generous emulation is sure to bring forth continual fruits of individual enterprise, whose benefits can never be confined to the corner of their birth. Under a system of Centralization no idea can diffuse itself unless first cut and squared and made palatable to the self-appointed few who presumptuously assume to guide the machine.

Even where Institutions of Local Self-Government are but imperfectly developed, individual energy, if untrammelled by meddling interference, will work its way; and has, in this country, worked wonders. But, when every proposition has to be submitted to a body unconnected with the interests of the spot, necessarily guided either by private interests, partial views, or speculative opinions, every individual energy and effort is effectually chilled and discouraged. The more generous the spirit and lofty the aspiration,—and therefore the more naturally fruitful for good works,—the more is the degradation of such a system felt and revolted from.

In no free country can the happiness or welfare of the community, or of any part of it, be allowed to depend upon the personal character of the individual who happens to be at the head of, or to have paramount influence in, any department. No man can call himself law-worth or free if the form which a particular branch of law, or its administration, shall take, can rest dependent on the character of any one or two men to whom its administration is entrusted.

Under true Institutions of Local Self-Government every opportunity is given for the development of every man's own mind and energy. If any newer and better adaptation be discovered, it can neither be silently suppressed nor openly frowned down by a few whose self-love or self-interest may happen to be touched. It is secure of a free and fair discussion by those interested only in the attainment of *the best*; and, if it have the character of truth, it is sure of ultimate adoption; for the interests of all are identical with the adoption of the most efficient means by every one. There

can be no systematic jobbing. Where no public work can be done without all knowing of it, and approving of it, or giving grounds of disapproval, jobbing becomes an impossibility. There is no getting certain schemes carried by any clique, or by private and sinister influence. But Centralization deadens every feeling of generous emulation; destroys every incentive to effort at improvement; and damps every ardour for the progressive development of resources. Instead of a stimulus being given to enterprise and to talent, in the contrivance of the best public works, and the devising of continual improvements, the theories and crotchets of one or two individuals are imposed as compulsory law; and every suggestion, however excellent, which does not conform to such theories and crotchets, is absolutely forbidden. The fruitful buddings of the mind are withered and all its produce blasted.

The pretence indeed is made that, by means of Centralization, the highest talent and resources can be brought together and so availed of. Many are deluded by such a specious argument. But the facts are notoriously the reverse: the whole pretence, and the premises on which it rests, are a fallacy. The facts are, that no work done under such public authority is ever so efficiently or cheaply done as when begun and completed by private enterprise. The facts are, that the highest talent and skill invariably find their encouragement, not from governments, but from those whose spirit of private enterprise, and whose immediate interest in the result, teaches them the true value of the best machinery and the highest talent, and that it is worth their while to find out and employ these, at whatever cost. It has been well said that "all the facilities which a government enjoys of access to information, all the means which it possesses of remunerating, and therefore of commanding, the best available talent in the market, are not an equivalent for the one great disadvantage of an inferior interest in the result."*

It has been seen how, by Local Self-Government, all the

* Mill's Polit. Econ., vol. ii., p. 515 (2nd edition).

kindly charities of life find practice and encouragement. That system practically realizes the aspiration of Christianity that, if a neighbour be found hungry or thirsty, or sick or naked or in prison, he shall have a helping hand given him by those who feel on themselves the duties and responsibilities of neighbours. But Centralization systematically kills out such practice and such sympathies. Should they rise, they are not permitted to be indulged in, except in such form as may be pedantically dictated by the irresponsible functionaries. Charity and goodwill are to be done only by deputy. Their objects are to be handed over to this Board or that Inspector, and dealt with according to square and rule.

Two remarkable illustrations of the practical effect of this system, socially, occurred in the year 1850; and, out of numberless such at hand, they shall be recalled as impressing, better than volumes of argument, the brutalizing and unhumanizing effects of Centralization.

In that year two cases happened which stirred universal sympathy for outrage inflicted upon helpless infancy and youth. One of them was, as every social and moral responsibility demanded, promptly prosecuted by the Parish authorities. After the prosecution was over, *the Poor Law Board refused to allow, in the Parish accounts, the expences of the Prosecution.* Thus was the lesson,—often before taught more or less distinctly,—again enforced, that every human sympathy, every social charity and moral duty, is to be killed out: that infancy may be outraged, and wanton wrong inflicted; but the nominal guardians of the local welfare are not to move: they must look on in silence. Soon occurred another case, still more harrowing. But the lesson so taught had, this time, taken its effect. The parish authorities did not prosecute, and the reason publicly and truly given by a man himself most kindly and humane in all his sympathies, was, that it was apprehended that the Poor Law Board would not allow the expences of the prosecution.

Can more be needed to rouse any man, in whose bosom burns any spark of human feeling or sense of social respon-

sibility, to bestir himself to help the casting down for ever of a system so hideous and degrading?

Bad and mischievous as Centralization always is, it is worst and most mischievous when it comes in under the fosterhood of sentimentalism. Then is it most difficult to be resisted, and most successful in its working. And every day, as it goes on, it uses this means more safely. Where a healthy manly tone and the sense of responsibility are deadened, cant, and sentimentalism have readiest access: and the moral courage which will resist them becomes daily rarer; and, where it exists, has an increasingly herculean and most invidious task.

Another result which must be pointed out in this connection is that of the *Social Treachery* which is bred. It is part of this crafty system that an espionage is kept up over all society. Instead of all in a neighbourhood being drawn together by common interests, there are always some among the number whose interests are made, as functionaries, to centre elsewhere; and there are a host of expectants who seek to gain their self-seeking ends by secret means and underhand influences. Favour is curried by privately communicating such information as it is thought will be pleasing to some special irresponsible department. The procrustean plans of that department are sought to be forwarded, as a means to promote the expectant's own selfish ends; and the public is merely treated, by both parties, as a thing which exists for the benefit of functionaries, in possession and in expectancy. This is not a merely incidental, it is a necessary and reckoned-on result of the system. It is a result which has already been produced in England, and which is now widely working.

Third; as to the practical results, *Morally*.

Servility, sycophancy, selfishness, and apathy, are the moral qualities which it is the necessary effect of Centralization to engender.

When the preliminary opinion or assent of any few, near or remote, and practically irresponsible, is made part of a

system, instead of independence and self-respect being encouraged, servility and sycophancy are bred. The only encouragement given is to those who are subservient enough to follow up the particular hobby of the individual who happens, for the time, to have chief influence. Healthy enterprise and steady progress can only go on by the fullest activity, in every direction, of all the different faculties of every one. This can only be attained by every individual mind having every opportunity of free range and scope, undwarfed and untrammelled by the consciousness that every thing must be made to square, either with a set of prescribed formal rules, or with the particular cast of opinion of any in authority. Centralization crushes all independence of thought and action; all individual energy, all self-reliance; and hinders all scope and range for the application of any of these. The development of every thing high and generous in human nature is repressed. That of every thing mean, sordid, base, and grovelling is nurtured.

Thus unhappily it is, that those who seek the means of Centralization to gain their ends, wanting moral dignity and consciousness of truth themselves, can only carry out their ends by debasing others. Conceited, but not self-dependent, they listen to nothing which can thwart their own capricious schemes. Self-dependence is not conceit: the two qualities are, indeed, opposed to one another. Conceit is puffed up with self-importance, but lacks that inborn consciousness of truth which gives energy to personal effort, relying upon the results. Self-dependence feels the responsibility and duty of self-exertion; rests satisfied that self-depending effort is the best evidence of sincerity and earnestness; and declines to accept any compulsory aid.

This conceit is always accompanied by a patronizing spirit. Nothing, indeed, can be more repulsive to the spirit of a free man, than the tone of sentimental patronization which is always on the lips of the promoters of centralizing schemes.

Centralization always tends to induce the bowing down in worship to the *material* part of man's nature, to the degrada-

tion of his moral and spiritual part. It sets up material well-being, ease, and convenience, as paramount to every other consideration; and attempts to tie all men down to such a narrow round of materialism as it devises. Instead of all material conveniences being felt to be results which ought to *flow from* the healthy activity of the moral and intellectual powers—the sustaining of the high tone of which latter is the noblest end,—men are taught to regard these material conveniences as the *ends* of life; ends which, with the less self-exertion they can be accomplished, the better. Men are taught that the best method is for the mass of mankind to remain in ignoble moral and mental unexertion, while bands of functionaries take care, for them, that these material conveniences shall be provided.

But the *moral* and *intellectual* cannot be thus merged in the *material* without profoundly evil consequences. It is not by any means necessary that, as material civilization increases, moral independence should become lessened. It has unhappily too often happened thus; and in England itself this has happened. But it is not an evil for which, in a country like England, the sound remedy may not readily be found.

The material civilization, sole attention to which is thus encouraged, is, after all, much more apparent than real. The Railroad and the Steam-engine may work wonders; but, among the mass of mankind, there is not the equal diffusion of the blessings thence resulting. True material civilization itself can never be present except when, by Institutions of Local Self-Government, the availability and worth of appliances is made to be understood, and so realized, by the whole mass of society.

The unhealthy pre-eminence which the influence of centralization always thus gives, throughout Society, to conditions of mere material well-being and what is falsely called "refinement," has another resulting evil, of no slight magnitude. This is the disposition, widely engendered, to regard externals as of surpassing importance; and, thence, to put on a false show of material position; to neglect the homely and

sterling moralities; and to consider, instead, the *vulgar* and the *genteel* as the two opposite poles of life. The artificial and spurious—but really unhappy—*appearance* is craved after, instead of men prizing the most an honest, straightforward, and happy truthfulness and simplicity.

It has been said that "the same refinements which enlarge the intellect and polish the manners of a community, relax its love of independence, and prepare the way for encroachments upon its rights." * But it was, long ago, more truly remarked by Tacitus, that, though "by the ignorant this may be called civilization, it is, in truth, but the badge of slavery;"† and that the means this so-called civilization uses to fix men's attention on material conveniences, as the main end of life, are but crafty devices for fixing servitude upon a nation.‡ This has led to the downfall of every state where, without revolution, it has been submitted to. An equal condition of true civilization and material advance,—but rendered far keener in its relish through being the felt reward of duties discharged and responsibilities fulfilled,—will be the accompaniment of the activity of Institutions of true Local Self-Government.

A cold, calculating personal selfishness is what is chiefly cherished, and relied on, by the system of Centralization. Men are taught that they may pay a certain sum of money, as the commutation for all the duties they owe to the state and their fellow-men, and then wrap themselves up in a cloak of impenetrable selfishness as their highest aim and good. And, when distress appeals to them, they are taught to point to the centrally controlled poor-house, or the centrally controlled health-board, or the centrally managed police, as that towards which they pay, and by which therefore, without their troubling themselves, such cases must be dealt with.

The supineness and apathy which so widely prevail on questions of real interest and importance; the difficulty there is, upon any occasion, in stirring up men to a sense of what

* Edin. Review, reprinted in Allen's Royal Prerogative, 2nd Edit. p. lxv.

† Tac. Agricola, xxi.

‡ Tac. Agricola, xiv.

the public welfare requires, or to make any personal sacrifice towards such an end; are all the natural, but the unhappy, consequences of the progress of Centralization. The few, civilized physically, but barbarized morally;—the masses, deprived alike of the means of physical and moral elevation:—such are the results which Centralization has always heretofore produced, and is always tending to produce. And at such a social condition men are content to look on with complacency, so long as their own selfish conveniences are not interfered with. This is not a very happy picture of human society; but it is rigidly a true one wherever Centralization has gained a footing.

Lastly; as to the practical results, *Intellectually*.

A system which destroys self-reliance, deadens self-respect, and annihilates forethought, can have but one character in its influences on the intellect. A system which dictates and controls, instead of stimulating every individual energy, can have but the effect of dwarfing and benumbing every faculty, intellectual as well as moral.

The true end of human society can only be the cultivation, to the highest extent consistent with their healthy and harmonious action, of all the faculties of every man. It has been shown that this result follows as a necessity, from true Local Self-Government. But the surest way to dwarf the development of either intellectual or moral faculties, is to encourage the feeling of dependence, and reliance upon, and continual looking up to, others for every rule of action; to engender the habit of conceiving that every thing is to be done for us, by others,—instead of for ourselves, by ourselves.

It is a very different thing for a man to *learn*, from what it is for him to be *dictated* to. Even if, as to the production of any single specific end, the immediate result could be the same, the far more important results, in a permanent moral and intellectual respect, are widely different. When dictated to, submission, dependence, and an unreasoning imitativeness are the qualities of mind produced; when

the end is gained by being *learned*, self-respect, independence, and a habit of reflection are the qualities produced. The means of this true learning are what are needed: the attainment of special ends will then assure itself. It has been shown that Institutions of Local Self-Government can alone supply the schools for so learning. Centralization annihilates education. It may rear up a polishing system, which,—when all originality of mind and all freedom of thought and all spirit of enquiry are deadened, and mind and thought are reduced to a certain dead level,—it may call *education*: it may cramp and dwarf the mind within artificial moulds, and call that refinement: but to anything approaching true education it is the inherent antagonist, the necessary and implacable foe. Education is only good when it capacitates; Centralization can only exist by incapacitating. Discussion and free enquiry are the only means to the former: by the latter these are inadmissible. Centralization makes, indeed, a wilderness of mind and morals, and calls it peace and civilization: but it leaves Revolution as the only hope for those, where it prevails, who believe man was made for other purposes than to be kept in bondage to man. To preserve men from that wilderness, and from such need for Revolution as their only hope, the vigorous assertion, earnestly and practically, of the System of true Local Self-Government affords the only means.

The system of Centralization, then, is one by which the energies and activity and enterprise of men in their political, social, moral, and intellectual relations are fettered and tied down, and subjected to the caprice and made liable to the arbitrary interference of a few irresponsible functionaries. It is demoralizing, degrading, and inconsistent with a spirit of freedom and with the existence of free institutions. It is a system of which the necessary effects and entire tendency are the smothering of truth; the obstructing of investigation and true enquiry; the promulgating and enforcing of individual and interested schemes and crotchets, instead of the encourage-

ment of careful, reasoned, elaborated truth. It is a system whose necessary result will always be, in a greater or a less degree according as it gains ground, to dwarf and stunt the development of the human faculties, and to check the putting forth of those energies which can never have free play but under that system with which centralization is in direct and perpetual antagonism—the system of individual, local, and general self-dependence, as carried out by Institutions of true Local Self-Government.

It is well remarked by Adam Smith, in order to illustrate the folly of speculation in money lotteries, that, if you "adventure upon all the tickets in the lottery you lose for certain: and the greater the number of your tickets, the nearer you approach to this certainty. There is not a more certain proposition in mathematics, than that the more tickets you adventure upon, the more likely you are to be a loser."* With profound truth the observation applies to Centralization. It is always the crafty course of the bringers in of this system, to attempt to soften down the repulsiveness of its first steps, as being only applied on a single or a trifling matter. So, by little and little, it creeps on, each step making the next easier. But,—if it is certain that no honest and freeborn man would accept, on any terms, nor on any assurance of increased material well-being and convenience, the abjectness of a state of entire and unmixed moral and intellectual servitude, in exchange for the manly self-respect of freedom and independence,—let every honest man lay it well to heart that the principle is the same, and the mathematical certainty of mischief the same, at each step he allows to be taken in the course of Centralization; from each new ticket that he suffers to be bought, by the nation, in that lottery the entire ticket of which is the unlightened abjectness of unbroken servitude. To-day Poor Law may be made the specious pretext; to-morrow Public Health; next day Police: till, one by one, —each step rivetting the bondage firmer, and making surer the

* Wealth of Nations, vol. i., p. 165 (ed. 1791).

next step,—every attribute of a free people and of free Institutions has faded away, to exist no more except in History.

"Centralization is the grasp of Despotism: Municipalities are the commons and promenades of a Free People. By the contraction of the one and the enclosure of the other we are losing our strength and freshness every day."*

But let it never be forgotten that, while every step towards Centralization must meet with the determined and unflinching resistance of every honest man, the alternative is not, and must never be allowed to be represented as, the old doctrine of simply "let us alone." The true sentiment of free men will always be, to assert the principles of self-government as their inherent right, their dearest inheritance and highest dignity; but to remember that such Right only exists as co-extensive with Duty and Responsibility. It is not only that free men will not let others interfere to manage and control for them, their affairs; but it is, that free men have the consciousness of the duty and responsibility not, themselves, to leave undone that by which the welfare of the community may be best advanced. It is because such sentiments are the natural and necessary growth of true Institutions of Local Self-Government, that, while "to centralize is the art and trick of despots, to decentralize is the necessary wisdom of those who love good government."†

* Walter Savage Landor; from a private letter, dated 20th Oct. 1849, quoted here with the writer's permission.

† F. W. Newman; Letter, dated 13th Oct. 1849, published in the "Daily News" Journal.

CHAPTER IV.

THE REPRESENTATIVE SYSTEM.

In the ninth year of the reign of Henry III., the Pope of Rome sent his nuncio to make certain demands of the King of England. But the answer he got was, that the king neither could nor ought to take upon himself to settle matters which concerned all the clergy and laity of the whole realm. And a common council of the whole realm was summoned accordingly.* And the same thing was declared in the 23rd year of the reign of his son, Edward I., in the remarkable and emphatic words, "What concerns all must be approved by all."†

And when, in the 32nd year of the same Henry III., he, and not the Pope of Rome, sought to gain certain objects within the city of London, and, in imitation of the Pope, sought to make the Abbot of Westminster the medium for his own encroachment, the Mayor of London,—the head ministerial officer of that City, as the king is the head ministerial officer of the realm,—made the right reply, that "nothing could be done in that matter without the assent of the whole Commonalty."‡

These illustrations, out of numberless similar ones which

* Matthew Paris (Wats' Ed.), p. 274: and see another remarkable illustration of the assertion of the same principle in the 28th year of the same reign. Mat. Par., p. 563.

† Rot. Claus. 23 Edw. I.

‡ *Liber de antiquis legibus*, fo. 15, cited in "What is the Corporation of London and who are the Freemen." By the present author. p. 13.

might be given, mark well what the only purpose of Representative Institutions, whether Local or National, is. Nothing being, according to the fundamental principles of the English Constitution, Law, to which the assent of the people has not been truly given, it will often become necessary that there should be, superadded to the primary Institutions of Local Self Government in which each matter is brought before the knowledge of, and discussed by, the folk and people, a machinery for collectively expressing, and devising the means of carrying out, locally, that opinion. As, too, every place, besides having interests confined within itself, has interests in common with the whole or greater part of the nation, it is necessary, if the advantages of national unity are to be secured (which it is presumed none will deny), that the means shall exist of collecting the general opinion on such matters, and adjusting any special claims of any special places. Such machinery and means constitute the completing part of the *System of Local Self-Government.*

It must never be forgotten, however, that the very name of Representative Government implies that the people are the source of all authority and power. There neither is, nor can be, any inherent authority or power in Parliament. Its authority is *derived* only; and that from which it is derived is, necessarily, more fundamental than itself. The offspring can never be allowed to smother and outgrow the parent without the greatest mischief following. When Institutions of Local Self-Government abdicate their functions, Parliament ceases to have any Constitutional existence or moral claim on the respect of any man. It becomes as much an Usurpation and a tyranny as is the engrossing of supreme power by any one man to whom, for any given purpose, authority may have been entrusted on any legitimate occasion.

Facility of combined action is, then, the object of Representative Institutions.

The purpose of a National Representative Institution is, to collect, in one, the public opinion of the whole land on matters of general interest or foreign relation. It has,

upon these, to consider and devise such means as may meet the exigency; and to carry out the expression of the will of the folk and people. It will be clear, and follows from the very principles of true Local Self-Government itself, as already explained, that no separate Local Institution is more legitimately competent to dictate (though it may always suggest) measures for the *Common Good* than is one central authority to dictate or control affairs of local management. Finally; the National Representative Institution will always properly exist as a high court of appeal. In England, the House of Lords alone has usurped this function, as well as others. The technicalities of legal detail, one of the results of a centralizing spirit, have probably had as much to do with this usurpation as any spirit of encroachment, in that House itself, though such spirit has been by no means wanting.*

All this is well expressed in numerous ancient declaratory statutes, where "the Common Council of the whole realm" is affirmed to meet "for the MAINTENANCE *of the* LAW, and the *redress of grievances which happen*," touching the welfare and "common good of the whole realm."

What is most important to be minded is, that the basis and only true foundation of Representative Institutions should not be forgotten; an original authority not be allowed to be claimed; the Institutions themselves, without which there can be no real representative system, not have their true character overlooked, nor their own integrity dealt with, and weakened, by this their offspring; finally, "that the privileges of the Representers may not eat up the liberties of the represented."†

* Lord Hale was well sensible of these encroachments; and that, legally and constitutionally, the true appeal lies to the entire Parliament, and not to the Lords alone. See his "Jurisdiction of the Lords' House." London, 1796. Numberless proofs and illustrations of this point might be given, but it is sufficient for the present subject thus to have glanced at it.

† Twysden, "Certaine Considerations," p. 172.

Unless constant attention be fixed on this, Parliaments and Common Councils become but other names for Oligarchies. They become but a mask and a juggle; a means to fasten the machinery of real despotism on a people, and to rob them of their liberties under the disguise of names. Lord Burleigh saw this when he predicted that "if ever England is ruined, it will be by a Parliament." This has been the growing tendency of Parliaments, and town councils too, in England, ever since the Revolution of 1688. In our own time it has reached its height. And the proposition, which some have made, for "Electoral Districts" shows how little the very purposes, and the only usefulness and function, of Representative Institutions are now understood.

A National Representative System does not, and cannot, mean that a certain number of *individuals* are represented, each submitting all power of control over his affairs to the aggregation of the representers. It means that while, and inasmuch as, there always will, of necessity, exist, in every country, certain groupings of men having certain common interests,—whether those groupings be within the circuit of a town, a village, or a shire,—there will also always be certain interests *beyond* those local ones,—interests general and national. Each local group can alone manage its own special affairs properly, and cannot submit to be controled or interfered with as to these by any general representative body. Still less, though upon exactly the same principles, can the General Representative Institution interfere in any affairs of individuals. It is the *Associated Bodies*, and as associated bodies, that are represented in the General Assembly, not the *individual citizens*. It is the affairs of the whole, as a congeries of groups, that the general assembly administers. It has nothing to do with individual affairs, or special local affairs, unless as in some way mixed up with general interests.

There can be no surer way of making National Assemblies impotent as means of good, and of converting them into mere instruments of Despotism and Centralization, than teaching

that it is to them that individuals, or individual groups, must look; that, on every matter, it is to Parliaments that appeal must be made. A whole people may, as in France, elect an assembly by even universal suffrage; but it is merely Empire delegated to an oligarchy. It is not an example of a true Representative System.

Among other practical evils which flow from the only true source of Representative Assemblies and their authority being lost sight of, is the opportunity it affords to the foes of human freedom to represent all such institutions as having originated from a monarch's grace and favour, instead of being matter of original and self-asserting right. The misrepresentations as to William the First, having this end, have been already mentioned. Another striking and no less mischievous illustration of the same thing is afforded by the attempt made, comparatively recently, to represent the English Parliament as late in origin, and that a Representative Assembly did not exist in England before the 49th Henry III.* It has been chiefly since the Revolution of 1688 that this doctrine, like so many other doctrines and practices inconsistent with the Constitution and the fundamental laws of England, has sprung up and gained supporters. Even Whitelocke, addressing King Charles the Second himself, in a tone and for a purpose designed to propitiate one from whom he had no favour to expect unless by making what he did and wrote palatable, justly ridicules the notion, then lately started by some, of this late origin of Parliaments; and one of the most interesting chapters in his elaborate work "on the King's Writ," is that on Parliaments; in which their antiquity is asserted and illustrated with much learning, though by no means exhaustively.† Sycophantic writers, after the Revolution of 1688, took up this new invention about the late origin of Parliaments; and it was, on account of the necessary in-

* Spelman has been incorrectly quoted as favouring this opinion. It is unnecessary to enter, here, into his views; but such an imputation on his learning and acuteness is assuredly unfounded.

† Whitelocke on the King's Writ, vol. i., p. 172.

ferences connected with it, too acceptable a doctrine to those in power not to meet with favour. It has been industriously propagated ever since; and, with the decline of the study of Constitutional History, a doctrine has thus gained ground, and is now almost accepted as true history, which cannot stand for an instant before the light which that study throws abundantly upon the subject.

Even the *name* of Parliament is older than the 49th Henry III. The word is found in contemporary records earlier than that date; and with reference to the thing itself. Thus the curious ancient Record in the Archives of the Corporation of London called "Liber de antiquis legibus" expressly names several early Parliaments; and, among others, two held in the 38th and 40th years of Henry III.'s reign.* And Matthew Paris's invaluable and interesting History abounds with illustrations of the same thing, one of which has been already quoted in this chapter.

That Representative Assemblies frequently met, and were alone able to make general Laws, in the time of the Anglo-Saxon Kings, is clear from the express letter, as well as internal evidence, of many of those bodies of Laws still extant. A learned writer on that subject has given a list, which he declares to be an imperfect one, of more than 120 English Parliaments under Anglo-Saxon Kings.† Others have reckoned a much greater number. ‡

When William summoned Harold to abide by the oath he had made to support the former in his claim to the crown of England, the answer he received was, that "it would have been the height of presumption on his (Harold's) part to have entered into any compact concerning the kingdom without the general Consent and Statute of the Common Council and People."§ The historian who records these remarkable

* See fos. 20 & 26. See also Close Rolls, 28 Henry III., mem. 12, and 32 Henry III., mem. 13.

† Kemble's Saxons in England, vol. ii., p. 241—261.

‡ See Justice Hutton's judgment in the case of ship-money. Rushworth, vol. iii., Appendix, p. 168.

§ William of Malmesbury, Lib. III., § 238.

words lived himself in the reign of William I.'s son, Henry I.

The reign of William I. not only furnishes instances of the meeting of the national assembly, but highly interesting information as to the composition of that assembly.

The forms of the writs issued by John, in the 15th year of his reign, to all cities and boroughs of the realm, as well as to the Peers, in reference to a parliament, are still extant.*

Magna Charta is demonstrable to have been made and assented to in and by a Common Council of the whole realm. The edition of it of the 9th Henry III. expressly states that an aid was granted to the King by the earls, barons, knights, free tenants, and *all others of the kingdom.*

Edward I., in the 29th year of his reign, answered the Archbishop who brought him the Pope's brief, that "the custom of England required that, in matters touching the state of the realm, counsel of all those who were to be affected must be taken."†

To add but one more to authorities which may be accumulated to almost any extent, the express and most significant words of the ancient and constitutional Coronation Oath (at least as old as Edward I.'s time) which the Kings of England had to swear, were, that the King should "keep and guard the Laws and customs which the folk and people shall have chosen" [quas *vulgus* elegerit].

It is self-evident that, had King Henry III. been obliged, unwillingly, to summon, as a new thing, a Parliament in the 49th year of his reign, the practice would not have been continued after the pressure was withdrawn and the battle of Evesham had been fought. But, instead of scouting the practice which this modern and interested doctrine alleges to have been thus novel, it has been shown that the victor in

* Patent Rolls, 15 Johan. pars 1, mem. 3; and Close Rolls, 15 Johan. m. 1. See also Mat. Paris, p. 209, as to the actual meeting of that Parliament. And as to the "Parliament" at Runnymede see Close Rolls, 28 Henry III., m. 12.

† Mat. Westminster, A.D. 1301.

that battle himself followed the practice, and declared that "the custom of the realm required" it.

We have, as already stated, in the extant Laws of William I., a remarkable insight given us into the composition itself of the great Council of the nation; and that, in a manner which illustrates, closely, the present subject. The Common Council is there spoken of as consisting of "the Sheriffs, and Aldermen, and Reeves, and other Bailiffs."* That is, it consisted of the heads of the various chief Institutions of Local Self-Government throughout the land. From what has been already explained, it will be clear that such a body included the very essence of a Representative Assembly. When the sheriffs from their shires, and the reeves and aldermen and other bailiffs from their cities and boroughs, met in Common Council, they went there well informed as to what was needed for the general good, and what would be acceptable, and accepted, or otherwise. Whoever, as individuals, made up the National Assembly, and however personally they might be willing to gratify the humour of the king, they necessarily felt that their influence depended, in each place from which they came, on their popularity, and they took care to know well the sentiments of the people, and how far they might safely go.† The Sheriffs were elected by the freemen, it must also be remembered, until a period long after the time of William I. Of this more will be said in a later chapter. The Reeves, Aldermen, &c., were always elective.

A curious record exists of what were formerly considered to be the essential qualifications of a member of the Common

* See "Government by Commissions," p. 63 and following.

† A writer on the times of Charles the Second, uses language which applies to the times of William the First, and thence downwards until the undermining and corrupting system of Centralization was introduced. It is the explanation of the difference between an independent House of Commons, as well as general spirit, and a servile and sycophantic one. "In those early days the art was not found out of splitting and multiplying places; as, instead of a Lord Treasurer, to have five Lords of the Treasury; instead of a Lord Admiral, to have seven Lords of the Admiralty; to have seven Com-

Council of the realm. The deportment of Parliaments must have been rather different when this was entered on the rolls than it is at present. The record occurs in the Rolls of Parliament* of the third year of Henry VI., A.D. 1425. The following version of the original, by Sir Edward Coke, adds some touches which show the sense in which so good a commentator read it. It is therefore given, in preference to the original.

"What Properties a Parliament man should have.

"It appeareth in a Parliament Roll, that the Parliament being, as hath been said, called the *Common Council*, every member of the House, being a councellor, should have three properties of the Elephant: *first*, that he hath no gall; *secondly*, that he is inflexible and cannot bow; *thirdly*, that he is of a most ripe and perfect memory. Which properties, as there it is said, ought to be in every member of the great council of Parliament: *First*, to be without gall; that is, without malice, rancour, heat, and envy. Every gallish inclination (if any were) should tend to the good of the whole body,—the Commonwealth. *Secondly*, that he be constant, inflexible, and not to be bowed or turned from the right, either for fear, reward, or favour; nor, in judgment, respect any person. *Thirdly*, of a ripe memory, that, remembering perils past, he might prevent dangers to come, as in that Roll of Parliament it appeareth. Whereunto we will add two other properties of the Elephant: the one, that, though they be of greatest strength and understanding, yet they are sociable, and go in companies; for sociable creatures that go in flocks

missioners of the Customs, nine of the Excise, fourteen of the Navy office, ten of the Stamp office, eight of the Prize office, sixteen of the Commissioners of Trade, two of the Post office, four of the transports, four of hackney coaches, four for wine licences, four for the victualling office, and multitudes of other offices which are endless to enumerate."—*A short History of Standing Armies in England: London*, 1698, preface, p. v. This enumeration gives but a faint idea of the provisions of the same sort which the 19th century witnesses. See "Government by Commissions," p. 253-4.

* No. 3.

or herds are not hurtful, as Deer, Sheep, &c.; but Beasts that walk solely, or singularly, as Bears, Foxes, &c., are dangerous and hurtful. The other that the Elephant is a lover of men, and shows the way to those going out of it. And these properties ought every Parliament man to have."*

It has been seen that the Sheriffs and Reeves, the heads of the several Institutions of Local Self-Government, made up, originally, the Common Council of the nation. These were all chosen by the whole body of the freemen. And when it was found inconvenient for these officers to leave, so often, their local duties, and others were appointed with the special duty of attending the Common Council of the Realm, the choice of the latter lay, as of course, in the same hands. It would be impossible to enter here into the evidence on this head. It is sufficient to say that, as to counties, it is clear from the Stat. 7 Hen. VI., c. 7,—which was the first open successful attempt to narrow, for oligarchic purposes, the parliamentary franchise,—as well as from earlier statutes and records, that every man, of whatever "substance and value," had, before the passing of that act, a voice in the election. But, as to towns, the same narrowing of the franchise was never accomplished until the passing of the (so-called) Reform Act. Whatever some individual places were pusillanimous enough to submit to, the rule of the Common Law was, and is, clear and unmistakeable. A celebrated election Committee of the 23rd James I.,—a committee composed of the ablest body of lawyers that England ever produced,—after the fullest consideration, declared what was "the common law, that is, the common right," on this subject. It affirmed that "of common right, all the inhabitants,—householders,—and residents within the borough,—ought to have voice in the election, and not the freeholders there only."†

There is nothing to confine the choice even to those who were other than "*villeins:*" indeed there is express evidence that the "villeins,"—commonly but most erroneously supposed to have been in a condition of slavery,—did take an

* Coke, 4 Inst. 3. † Glanville's Reports, p. 142.

immediate part in the affairs of the Institutions of Local Self-Government: and it is clear that, where they did not attend themselves, they were represented in the Shire-motes and elsewhere by those with whom they had entered into the mutually advantageous relations of Lord and Men;—relations not abject, but strictly reciprocal, and including, as one element, the idea and function of Local Self-Government in both its parts; namely, full independent control over special affairs, and representation, through the voluntarily selected Lord, in more general affairs.

It is quite clear from the ancient records, that, until a comparatively late period, the size of all towns and cities being much smaller than at present, and the population of Counties much less, no authoritative Local Representative Bodies existed for *legislative* purposes. The inhabitants themselves were summoned, in primary folk-motes, to decide every question. This would not have been possible to work well but for the perfection in which the Institutions of Local Self-Government existed in England. Each shire being divided into hundreds, and each borough and city of any size into wards, the members of each of which divisions met regularly and frequently, all the inhabitants were well prepared to express an opinion when assembled in the general folk-motes. Those folk-motes were thus very different things from a modern town's-meeting; where the question in hand has not been sifted by the many sections separately, and where, consequently, a superficial showy display will always do more than a well reasoned argument or elaborate statement.

The practice of Juries, however,—which is only the development of the Representative Idea applied to *administrative* purposes,—was in use from a very remote time among all local bodies. These fulfilled many of the purposes which Town Councils, &c., now fulfil.

For every Election, to any office or function, it is necessary, and always has been, that there should be a sufficient warning, to the electors, of the day and time of election.*

* Glanville's Reports, p. 19; and see Pref. to ib., pp. xlix. and l.

The election must always be in full folk-mote. This is a most important point, and special attention will have to be called to it hereafter. As in all other proceedings of Institutions of Local Self-Government, this affair is to be done openly and in sight of all. A statute relating to the election of Members of Parliament was passed in the 7th Henry IV., c. 15, which, being precisely declaratory, on all its points, of the Common Law of the land, may be usefully quoted.

"At the next shire-mote to be holden after the delivery of the writ of the Parliament, proclamation shall be made, in the full shire-mote, of the day and place of the Parliament, and that ALL THEY *that be there present, as well suitors duly summoned for the same cause as others*, shall attend to the election of the knights for the Parliament; and then, in the full shire-mote, they shall proceed to the election, freely and indifferently, notwithstanding any request or commandment to the contrary:" and this also "*without any commandment of the king, by writ or otherwise, or of any other.*" *

There was no delayed Polling, until a very recent period, comparatively speaking. Such a course, as will presently be shown, is only a device of Centralization for drawing men off from the fulfilment of their duties in the Community to which they belong. The entire Election had to be got over between the hours of 8 and 11 in the forenoon.†

The importance of frequent meetings of the Common-Council of the realm was always felt. The universal term of election to all offices, except the Crown itself, was, and is, constitutionally speaking, annual at the utmost. The choice of representatives to Parliament followed the rule. A new Parliament met at least once a year. It was indeed proposed by the Oxford Committee of 1258 (42 Henry III.), in one of the ordinances framed by them in conformity with the special object of their appointment, that "there shall be

* Coke, 4 Inst. 10.

† See 23 Henry VI., c. 15; but the mode in which it is put implies what the Common Law and convenience and custom had sanctioned.

three parliaments in every year; the first on the octave of St. Michael; the second on the morrow of Candlemas; and the third on the first day of June, that is, three weeks before St. John's eve."

Frequent statutes declared the law of the land to be that, "for maintenance of the Law, and for the redress of grievances, a parliament shall be holden at least once each year, and more often if need be:"—and many instances are on record of more than one newly chosen Parliament in the same year. The King, early as well as late, sought sometimes to evade this matter. Hence the insisting upon it. Resistance was also made to attempts to pack Parliaments. Thus, on the Rolls of Parliament of the 50th Edward III. there occur indications that undue elections had been made; and a re-declaration of the Common Law is consequently found, that all elections shall be "by the common assent of all the shire."

In the 16th year of Charles the First a very remarkable statute was passed* to secure the frequent assembling of Parliament, unsummoned; so that the mischiefs that had happened through the long, illegal, and unprecedented attempt of that king to rule without a Parliament should never again happen. The provisions of the statute 7 Henry IV., c. 15, have been quoted. Those of this statute of Charles were a renewed declaration of the same principle. Beginning by reciting the Law, and the importance, of Annual Parliaments, it goes on to provide that, should the king's writs not issue as they ought, at the end of three years the Parliament shall assemble, in the mode there devised, without any king's writ. This statute was in strict accordance with the Common Law and several previous declaratory acts. Notwithstanding this, however, it was repealed in the 16th Charles II.,† and replaced by a mere declaration that the king should issue his writ at the end of three years. This, if it meant anything, clearly meant, accompanying as it did the express repeal of the only machinery for enforcing, without

* 16 Car. I., c. 1. † 16 Car. II., c. 1.

recourse to Revolution, the requirement, that the summoning or not of Parliament was to be placed in the king's hands; and it is the first admission of the sort that disgraces the Statute Book. The work thus begun was, however, followed up by the enemies of Free Institutions, in the Septennial Act of no longer ago than George II.; a Statute which altogether violates the letter and the spirit of the Common Law and the Constitution of England, and their practice through centuries; and which has done more than anything else to secure the encroachments of Centralization upon the long-inherited liberties of Englishmen.

The Folk-motes of all true Institutions of Local Self-Government are dependent on the pleasure of no man. On regular, fixed, and frequent days they used always to meet, whether summoned or unsummoned; though it was the duty of the proper reeve to give due notice. At this day the law requires that the Shire-mote shall be held once a month; and, were the freemen acquainted with their rights and responsibilities, they would thus meet, and discuss and determine upon the matters that concern them,—and not idly seek, at the hands of Parliaments or Governments, rights and privileges which are theirs already by inheritance. Any such tacit admission of the power of Parliament to interfere or to deal with these rights and responsibilities, is only endangering them. It is but too eagerly seized on by the foes of freedom, as an abdication of functions more fundamental than Parliament itself; and it is speedily made the occasion of still further inroads upon the spirit and the practice of Local Self-Government.

Members of Parliament are, most properly, entitled by law to payment for their services; which any member may at this day enforce. With the ignorance of the Laws and Constitution which marks all efforts of legislators in our day, whether directly attacking, or professing to be on behalf of, the liberties of the people, the payment of members is being now asked as a boon. It would be well, in this as in many other cases, that the existing state of the Law should, in the

first instance, be ascertained. The machinery for procuring payment by any member is exceedingly simple, being in accordance with the practice of Local Self-Government. That man will do a great service to the liberties of his country who will have the moral courage to claim the payment of the wages as member, to which, by the Common and the Statute Law, he is entitled.

It may be here remarked that the House of Peers is, constitutionally speaking, a remarkable and very interesting illustration of the ancient combined folk-mote and representative assembly. It has been already stated that, on certain mutual relations being entered into, of a reciprocal and not servile nature, one person attended the folk-motes of freemen on behalf of several others;—responsible for them and their deeds there, as well as for himself; and watchful of their interests. The Lords appeared thus,—just as a Jury does,—in a double capacity, as freemen on their own behalf, and also, but expressly and importantly, as representing a body of others.

As this point of the Representative quality of the House of Lords will be new to many, it may be useful to give a single illustration, out of many that might be quoted. In the 14th Edward III., an aid was very importunately asked by the Crown. But the Lords and Commons were not easily made to forget their duties and true functions. So "the Prelates, Counts, and Barons," says the record, "*for themselves and for all their tenants*, and the Knights of Shires, *for themselves and for the Commons of the land*," answered, &c. The Lords represented themselves, and those who stood in the voluntary relation of homage to them; the Knights of Shires, &c., represented, also, themselves (this is not unimportant), and those freemen who, being in homage with no man, would otherwise have no voice in the Common Council of the Realm. This is a subject very pregnant with matter for the reflection of every thoughtful man.

In another respect the House of Lords reminds us of the ancient composition of the Common Council. Every title in

that House is one which was anciently elective, and represented special local communities and interests.

How and why the body in whose place the existing House of Lords stands came to have a place in the Parliament is, then, clear. It may not seem so clear why, when the names only remained, and the representative character was at an end, the position was allowed to be retained. Did the members of the House of Lords virtually fulfil their ancient functions, by taking an active and earnest part in the welfare of their neighbourhoods, meeting and aiding their fellow freemen with all the advantage of their additional opportunities of acquiring information and promoting good works, the constitutional anomaly of their separate legislative power would be less striking. They would fulfil the functions of representatives, though without the name. There are, happily, some among them who actually do this; but the duty of feeling it as a constant responsibility certainly does not sufficiently prevail. Notwithstanding this, however, it cannot be doubted that the existence of a body which, from circumstances of position, is less apt to be swayed by temporary impulses, and which is enabled always to make itself heard, must be useful, though it will often incur unpopularity. It is this circumstance that has made the actual unconstitutional position of the House of Lords, considered in reference to its true origin and meaning, to be yet not inconsistent with the *spirit* of a Constitution the great aim of which is to secure that no subject shall be dealt with without having been first considered on every side, and under the influence of every possible variety of motive.

A later chapter will be devoted to pointing out what Safeguards have been provided by the Common Law (however much now unheeded) in order that the General Representative Assembly of England shall retain its due position and wholesome working. It is important to remember, that, to be an Institution which shall work well, Parliament,—having not an *original*, but only a *derived* authority,—should not be able capriciously to change and alter its own appointed course or

sphere of action. Thus it is that Sir Edward Coke tells us that, "As every Court of Justice hath laws and customs for its direction, some by the Common Law, some by civil and Canon Law, some by peculiar laws and customs; so the High Court of Parliament has its own proper laws and customs."* He elsewhere tells us that Parliaments succeed well, "always provided that both Lords and Commons keep them within the circle of the Law and custom of the Parliament."† And he warns his countrymen, most truly, that "Innovations and Novelties in Parliamentary Proceedings are most dangerous, and to be refused."‡ No such novelty can be admitted without endangering some fundamental principle of those institutions which are more fundamental and more valuable than Parliament itself; without endangering that the increased powers assumed by the Representatives "shall eat up the liberties of the represented."

It is remarked by a learned scholar, as if it were something anomalous, that "the acts of an Anglo-Saxon Parliament are a series of treaties of peace between all the associations which make up the state; a continual revision and renewal of the alliances, offensive and defensive, of all free men."§ But all National Representative Assemblies must, in point of fact, carry out this idea, or they are merely an embodied lie. They are simply—bonds of union between Associated Groups of free men, each of which Groups is doing its own business within its own sphere. They cannot, without a departure from their true functions, be allowed to become oligarchies, having independent authority. The same idea precisely is embodied in the words of Sir Edward Coke when he declares, that what is done by Parliament "must have two special properties; the one in the creation, *viz.*, that it be given by the *common consent* of the whole realm in Parliament; the other in the execution, *viz.*, that it be given and employed for the *common benefit* of the whole realm, and not for private or other respects."‖

* 4 Inst. 14. † 4 Inst. 35. ‡ 4 Inst. 11.
§ Kemble, vol. ii., p. 184, note. ‖ 2 Inst. 529.

It is the high, peculiar, and most important function of Parliament to maintain, through the whole land, the supremacy of certain Fundamental Laws and Institutions, and to prevent the encroachment on, or evasion of, those laws and institutions,—either by individuals who may happen to be entrusted with authority, or by any local district, or private company of speculators, whose special interests may be imagined likely to be thereby advanced.

From its true functions Parliament, in England, has long been more and more departing; thus helping the triumph of Centralization over Free Institutions. Neglecting, almost entirely, the true end of its existence, it has assumed control and interference in matters quite foreign to its functions, and with which it is impossible that it can, with any usefulness, deal. The only effect of this unlawful course has been, and is, to overload the members with an amount of business that no human industry can properly get through; and, thus, to hand over Parliament as the convenient instrument for carrying out the irresponsible purposes of Centralization. Parliament has, in fact, become little more than the registrar of the decrees of governments aiming more and more, every day, at suppressing every trace of Local Self-Government, and at supplanting that only lawful and healthy system by the unlawful and unhealthy system of Centralization. The practical control of Parliament over either taxation or legislation is now merely nominal. It is only on a few occasions, almost always of the least real solid importance, that attention is given, by the body of Members, to their duties. The whole amount of the taxation imposed upon the nation, and every sort of measure by which their liberties are insidiously attacked, are simply brought to Parliament to be endorsed; and this endorsement is given, in general without any show of discussion or opposition, always without any real and effective discussion. Measures are hurried forward, or rather smuggled through, with an indecent haste which is a mere mockery of Parliament; and which, had Parliament any sense of its own dignity, it would indignantly resent. It is required for its own true dignity;

for the existence of self-respect among its members; for its relief from the oppressive burthen which now lies on it; and for the due fulfilment of what business it does undertake to execute; as well as for the maintenance of the liberties of the nation; that Parliament should confine itself within the true and legitimate functions which the Constitution has marked out for it, and which can alone belong to any legitimate and well-working General Representative Assembly.

Let it then, in brief, be repeated, that Parliament only lawfully exists as a body of the assembled actual representatives of numerous Associated Groups of men existing over the whole land: which latter, while they possess all powers of Local Self-Government, Representative and Original, within themselves, have also, within themselves, a perfect machinery for the education and expression of Public Opinion, as well on the matters which concern themselves only as single associated groups of men, as on those which concern the *general* welfare; which latter are therefore properly committed to the General Representative Assembly, or Parliament, to administer. Such a body is really, and so alone can truly be, a National Representative Assembly. And those who would suppress or hinder the free working of those Institutions of true Local Self-Government, are, in fact, however disguisedly and stealthily, but practical rooters out of all true Representative Institutions, whether local or national.

CHAPTER V.

THE CROWN.

It is highly important, to a true comprehension of the Principles and Practice of Local Self-Government, that it should be well understood what is the Constitutional Function of the Crown.

The office of the Crown is a simply ministerial one. As the Mayor is head ministerial officer of a borough, and the Sheriff of a shire, so is the Crown head ministerial officer of the whole National Unity. The office began in Military leadership; and it has depended on the spirit of energy and self-respect which has existed in different nations, how far one put into such a position of power, for special purposes, has been able to abuse, or compelled to use properly, the authority with which he has been so entrusted.

It has been already seen that Bracton, writing 600 years ago, describes the Laws of England as made by the common counsel and consent of the realm,—of those using them,—and adds that they are "guaranteed by the oath of the king;" that is, he has no hand in making them, but is, as the head ministerial officer, sworn to see them carried out. This is his peculiar function.

In another place the same writer says, with equal significance, that "the king has a master, God: *also the law, by which he is made king.*"* And Fleta (550 years ago) says that the king "has no superior in the kingdom, except God *and the law.* And *because he is made king by the law,* dominion and power must be attributed to the law; and it

* Lib. II., c. 16, § 3; and Lib. I., c. 8, § 5, &c., &c.

must be maintained by him to whom the law assigns honour and power."* Thus the Crown, in the opinion of writers so near the time of what is commonly, but erroneously, called the Conquest, had no independent authority, but was the appointed by the Law for the maintenance of that Law. So, the Constitutional Coronation Oath, already quoted, runs, that the king will "maintain the Laws and Customs which the folk and people shall have chosen." Bracton expressly says, indeed, that he cannot be called king "where his pleasure, and not the law, prevails."† And Fleta, no less clearly, after having declared that a King becomes a tyrant when he violates his true function, adds, "For to this end is the king elected,—that he may cause justice to be dealt equally to all."‡ And Lord Coke says, expressly, that "*Rex præcipit* [the King commands] and *Lex præcipit* [the Law commands] are all one; for the king must command, by matter of record, *according to the Law.*"§

The Crown is, then, simply the point of unity of the whole nation; a Ministerial Officer, having the same duty to see the law well kept, through the realm, that the Sheriff has in his shire, and the Mayor in his borough.

And it is in this that consists the dignity of the Crown; its true and only claim to respect and loyalty. If the Mayor of a borough, in the discharge of the ministerial functions of his honourable office, receives outrage or insult, that outrage or insult extends to every member of that Local Community. And so, if the Crown, in the discharge of its ministerial functions, receives insult or outrage, that insult or outrage is inflicted on every freeman in the land.

It has been shown to be the mark of Centralization to assume a dictation and control, above and beyond the law. Instead of remaining ministerial in its functions, as the Law by which it exists requires, the Crown, under any of the

* Fleta, Lib. I., c. 5, § 4.

† Bracton, Lib I., c. 8, § 5.

‡ Fleta, Lib. I., c. 17, § 3; and see Bracton, Lib. III., c. 9, § 3.

§ 2 Inst. 186.

forms of Centralization, assumes the shape to which Bracton declares that the name "tyrannus" and not "rex" belongs.*

This distinction is of the highest importance. It is too generally lost sight of; and the remark is often made that "there must be Centralization in some shape." Unity is not Centralization. The existence of an officer to discharge ministerial functions is in no way inconsistent with the fullest freedom, but, on the contrary, one means of securing it. It is when such an office encroaches upon provinces which do not belong to it, and uses the authority it has to seek to obtain powers and control inconsistent with its merely ministerial function, that it becomes inconsistent with freedom, and loses its claim to the respect and loyalty of all free men.

Through the whole of our Constitution the spirit of mutuality runs; mutual obligation, mutual responsibility. It is so between individuals, neighbours; and it is so between the ministerial officer and those he is head over. This extends to the Crown. And not in name only, but, as our history shows, in reality. We are expressly told that such fealty is owing to the king as a man owes to his Lord; and the mutuality of the latter cannot be more strongly expressed than it is by the old writers. In the Saxon Laws it is emphatically put upon the basis of mutual agreement.† Bracton says,‡ with peculiar significance, that homage is the bond by which "any man is held and bound to guarantee, defend, and maintain his tenant against all men; and, on the other hand, by which the latter is bound, himself, to render due service therefore. Thus homage is contracted at the will of each, as well Lord as tenant: and, on the other hand, it is dissolved at the will of either; for nothing is so agreeable to natural equity as that every thing should be able to be loosened by the same means as it is first bound by." And

* See, also, this distinction of *King* and *Tyrant* drawn by Sir Thomas Smith in his "Commonwealth of England," Book I., chapter 7. Ed. 1621.

† Ancient Laws and Inst., vol. i., p. 179.

‡ Bracton, Lib. II., c. 35, § 2.

Glanville says, that "as much as the man owes to his Lord for the sake of homage, so much the Lord owes to him for the sake of Lordship."*

Without going into the many instances of the assertion of this mutuality between the Crown and the freemen which might be brought up,† it will be useful, as direct illustrations, to mention the cases of Edward II., in which allegiance was formally disavowed, on the express ground of a breach of the mutuality on his part;‡ and that of Richard II., in which the Parliament sent the king a message, setting forth, in terms, that, by ancient statute and the practice of the realm, it was lawful for them, with the common assent and consent of the people, to remove the king and put some other in his stead.§ Some years later the latter king was formally deposed, "as in like cases, by ancient custom of the realm, it has been done;"—as is expressly declared upon the extant Rolls of Parliament.‖

There is, in Bracton, a passage so strikingly illustrative of the present point, that it will be useful to quote it as showing the clear sense which our fathers had of the responsibility of the Crown to the people, and the duty of the latter to insist on the observance of the mutuality alluded to.

"The king," says he,¶ "has a superior,—God. Also the law, by which he is made king. Also his Court, who are his companions. And whoever has a compañion has a master. And so, if the king shall not have kept himself within bounds, that is, within the law, his companions ought to put a curb upon him,—unless, indeed, they themselves shall, with the king, have not kept within bounds. And in that case the people shall cry, and say, 'Oh Lord Jesu Christ, tie up their

* Glanville de Legibus, Lib. IX., c. 4.

† See "Government by Commissions," p. 48.

‡ Knyghton, 2550.

§ Knyghton, 2683; and see Rolls of Parliament, (Plac. de coron.) 21 Rich. II., No. 3.

‖ Rolls of Parliament, 1 Hen. IV., No. 51.

¶ Lib. II., c. 16, § 3.

jaws with a rein and a curb.' And then to them the Lord shall say:—'I will call down upon them a race strong and distant and unknown, whose very language they shall not understand; which shall destroy them, and shall tear their very roots out of the earth; and by such they shall be judged, because they did not do justly to their people:'—and, finally, their hands and feet being bound, he shall cast them into a furnace of fire and into outer darkness, where shall be weeping and gnashing of teeth."

But what is figuratively put in this strong language was provided for, in a more practical and straightforward way, by actual Statute, in the Great Charter of King John. It was therein expressly provided that, if the king or any of his servants broke any article of the charter, means of instant redress should be taken by the people themselves; who are "to distrain and distress" the king "all the ways possible, till the grievance is redressed *according to their judgment.*"*

That the Crown is an office elected by the people has already been stated by some of the writers quoted; elected for the special purposes of its responsible functions. Need it be added that, as thus deriving its authority from the people, its authority and dignity are far higher and nobler than by any other claim that could be pretended? "For this," says Bracton, "has he been made and *elected*, that he may do justice to all."† "For the maintenance of his people's law, and of their persons and properties, the king is made; and for this end he has power, sprung from the people [a populo effluxam]; so that he cannot rule his people by any other power."‡ And the Constitutional Coronation Oath distinctly shows the same thing; which is not indeed altogether lost sight of in the diluted form of Coronation Oath adopted after the Revolution of 1688. It needs only to be further remarked that the Crown of England is still filled only by election;—for it is not the less elective because it has been appointed to

* See "Government by Commissions," p. 69, &c.

† Lib. III., c. 9, § 3.

‡ Fortescue, De laudibus legum Angliæ, cap. 13.

be filled, on certain conditions, by the children of those first appointed. The only title to the Crown of England, now, is by Act of Parliament; and it is liable, at any time, to such alterations and restrictions as Parliament may think fit to impose.*

It is open to any one, in a free country, to consider and discuss, with the utmost freedom, which is the form of head ministerial officer best calculated to maintain free Institutions;—one in which the election occurs frequently, as in the United States of North America, or one in which it is arranged more permanently, as in England. It is, however, a question extremely difficult to decide with any conclusiveness. There are, unquestionably, dangers of no slight kind arising to the morals and liberties of a people from the factitious conditions which grow up round a "court," and which are very apt to be confounded, by the uninformed, with the true functions of the Crown. The too easily excited worship, also, of mere outward rank and meaningless ceremony, is always debasing and demoralizing. On the other hand, opportunity for unsafe ambitions, and, to attain them, a less steady maintenance of the law, is afforded by frequently recurring elections to such an office. And the individual who attains it will always have far more personal influence than under the former arrangement; and is able, of his individual motion, to work far more mischief than, with due constitutional vigilance, a king of England ever could.

It has been justly remarked that "Princes who succeed by hereditary right [*title* is meant] are apt to confound the office they hold, in trust for others, with the private estate which a man inherits from his ancestors. Subjects, on the other hand, deceived by the analogies between these two sorts of inheritance, are led to believe that royalty belongs to the king as an estate belongs to its proprietor. From these misapprehensions many inconveniences have arisen."† But, on

* See further, "Government by Commissions," p. 47, and note.

† Allen on the Royal Prerogative, p. 48.

the other hand, it will be clear to every one who has once comprehended the spirit and principles of Local Self-Government, that these are dangers from which the practical vitality of Institutions of Local Self-Government will fully protect a people; and they are dangers from which those Institutions did, practically, protect England for centuries. It is extremely doubtful whether the liberties of England would have been so well maintained under the more frequently recurring head-elective practice. Without, however, further discussing this difficult problem, it is sufficient that the existence of a crown, the occupation of which shall be hereditary under conditions imposed by Parliament, is fully consistent with the utmost enjoyment of Free Institutions.*

With respect to the legitimate range of the functions of the Crown, they were very clearly laid down by the House of Commons, after the most full and careful consideration among a band of the greatest lawyers England ever produced, including Sir Edward Coke, Selden, Serjeant Glanville, and others, at the time of the debate on the Petition of Right, when the Lords wanted to make some exceptions for Sovran power. "There is," said the Commons, by the mouth of Mr. Serjeant Glanville, "there is in the King no Sovran power or prerogative royal, to enable him to dispute with, or take from, his subjects that birthright and inheritance which they have in their liberties, by virtue of the Common-Law and these statutes [named in the Petition of Right]; which are merely positive and declarative, conferring or confirming, ipso facto, an inherent right and interest of liberty and freedom in the subjects of this Realm, as a birthright and inheritance descended to them from their ancestors, and descendible to their heirs and posterity. But the Sovran power wherewith he is intrusted† is only for the protection, safety and happiness of his people,

* See observations on this point in "Parallels between the Constitution and Constitutional System of England and Hungary," p. 76 & 77.

† See also King Charles's own Answer to the 19 Propositions, Husband's "Exact Collections of Remonstrances," &c., p. 320, &c.

in preserving this their inherent birthright and inheritance of liberty and freedom, and those laws and statutes which ratify and declare them." * This exactly coincides with what Bracton had written, 400 years earlier, when he expressly marks the authorship and alteration of all Laws as belonging only to the people using them, and the part of the Crown as being simply the assuring, upon his oath, the maintenance of them, by means of the authority for that purpose entrusted to him. Incidental illustrations of this point are perpetually found. Thus, Sir Thomas Smith says, in his "Commonwealth," (300 years ago) that "Committees are chosen by both Houses "*to frame the Laws* upon such Bills as are agreed upon." † Among other encroachments which have grown up within late times, is that of the Ministers of the Crown coming down with Bills ready framed, and asking to have them passed by the Houses of Parliament. This is an entirely unconstitutional course, and of very dangerous consequence. The part of the Crown is, simply, formally to recognise the Laws made by the folk and people, through their true representatives; and so to include them within the obligation of the Coronation Oath. ‡ But this system of bringing in new Laws, ready cut and dried, and proposed by the Crown or its ministers, is the direct admission of Centralization in its worst form. It

* Prynne's "Demophilos," p. 9; and see and compare Rushworth, vol. i., p. 579, (23rd May, 1628,) which expresses the same ideas in almost exactly the same words, but with such trifling variations as but the more authenticates each copy. Prynne's account is the more likely to be strictly accurate.

† Book 2, c. 2.

‡ Every separate Law thus made seems to have been formerly sworn to by the Crown. See Spelman's Glossary, "Assize," &c. The following very curious passage, out of the Rolls of Parliament, of 8 Edw. IV., shows how well the true functions of the Crown were then understood:—

"It was shewed by the Kynges commaundement and in his name, by the mouthe of the Right Reverent Fader in God the Bisshop of Bathe and Welles, Chaunceller of Englond, unto the seid Lordes and Commons, that Justice was grounde well and rote of all prosperitie,

opens the door to, and has had the effect of, enabling all kinds of unlawful and arbitrary measures to be put upon the Statute Book, without those whom they concerned, and whom alone the Constitution allows to be the lawful framers or alterers of any such, knowing in reality anything about the matter. It has already followed, from the sluggish and apathetic temper begotten in this country through the growth of Centralization, that the Ministers of the Crown are now actually expected to do, as a regular business, what is thus unlawful, unconstitutional, and very dangerously mischievous. An entire change in this respect must be made, and the sound and only wholesome constitutional principle and practice returned to, before Centralization can receive an effectual check, and the rights and responsibilities of free institutions be secured.

It is necessary, in order to understand this important subject, thoroughly to comprehend the nature of the Rolls of Parliament and other ancient records. In times when men rightly thought that good Government consisted in the sound administration of Institutions of true Local Self-Government, and did not seek, therefore, as in modern times, to do, imperfectly and arbitrarily, by long, minute, and perpetually varying compulsory Acts of Parliament, what can only be well

peas, and pollityke rule of every Reame; wheruppon all the Lawes of the world been grounde and sette; which resteth in thre;—that is to soy, the Lawe of God, Lawe of nature, and posityfe Lawe: and, by saying of all Philosofers, felicite or peas in every Reame is evermore caused of Justice; as it appeareth by probabill persuacions of Philosofers. Wherfore, first, he asked, What is Justice? Justice is, every persone to doo his office that he is put yn, accordyng to his astate or degre; and, as for this Lond, it is understoud that it stondeth by iii estates, and, above that, oon principall; that is to witte, Lordes Spirituell, Lordes Temporell, & Commons; and, over that, State Riall above; as oure Soverayn Lorde the Kynge; which had geven unto hym in commaundement to sey unto theym, that his entent fynall was to ministre Lawe & Justice, and to plante, fixe, and sette peas thorough all this his Reame, by th' advis of his Lordes Spirituell and Temporell," &c. (17th May, 8 Edward IV., A.D. 1468.)

done by the sound and responsible action of those Institutions of Local Self-Government, the Rolls of Parliament recorded, intermixed and undistinguished, what was done by the Crown in its simply ministerial capacity, what was done by Parliament as the highest tribunal of judicial appeal, and what was done, also by the latter, as a legislative body. The inquirer will fall into grievous error if he confounds together, in one category, all that is found on these invaluable Rolls. It merely stands there connected in order of time. So jealous were our fathers that, even in the discharge of its ministerial duties, they insisted upon the Crown always acting, not on individual motion, but on the advice of a private Council,* generally but not exclusively of high nobility and ecclesiastics. But the proceedings of these advisers were not legislative; they were simply ministerial. It is the confusion of these wholly different things that has led to much error, and afforded the enemies of free Institutions the opportunity of extracting from a state of things which sprung actually from the so jealous watchfulness of our fathers over the functions of the Crown, a superficial argument in favour of the Crown's legislative and prerogative authority! If a man complained of a public wrong done, he might move the Crown that the remedy be applied; and the Crown would, in its ministerial capacity, order the appliance of it *through the means of the proper Institution of Local Self-Government.* The order might be put, and such are often found, upon the Parliament Rolls; but it did not thereby become a legislative act. An illustration of this occurs in the case of a complaint made in the year 1306, of the obstruction of the Fleet River. A writ thereupon issued to the Mayor and Sheriffs of London to see the remedy applied in the proper and lawful mode.† When Parliament was sitting, these applications to the Head Minis-

* See, for example, Rolls of Parliament, 50 Edward III., No. 10; 11 Henry IV., Nos. 14, 39, 44; 1 Henry VI., No. 26; 18 Edward III., stat. 2, c. 1; and the last line of the before-quoted Roll of 8 Edward IV., p. 97.

† Rolls of Parl., 35 Edward I., No. 59.

terial Officer were usually made through the hands of the Representatives; and hence it is that they are found on the Rolls of Parliament. But they were all acts of a ministerial nature only; the maintaining of the actual laws and customs of the realm; not the making of new laws or regulations to suit the occasion. Attempts at the latter were rightly treated as usurpations.

Nothing can more clearly put all this, or more strongly express it, than the language used at the time of the Proposition for the Petition of Right. For the true force of this language to be understood it must be borne in mind that the Parliament which proposed and passed the Petition of Right was not the Long Parliament. It was the Parliament which sat many years earlier, and before any thoughts hostile to the authority of the Crown itself had sprung up.

The whole of the discussions, both before and after the passing of that Petition of Right, turned, in fact, upon the very point in question;—namely, whether the Crown had any discretionary authority, or was merely the ministerial instrument for maintaining the actual Laws and Customs of the realm; whether it was to be permitted to issue Commissions (always the means of making arbitrary Laws) of its own pretended authority, or whether it was to be kept within its constitutional function of putting in motion, when occasion required, those Institutions of Local Self-Government by which only all matters are to be inquired into, and adjudged upon, and the Law administered.

Complaints having been made of violations of the Laws, the King was anxious that Parliament should rely on his general assurances as to the future. The House of Commons, very properly, desired a formal re-declaration, to remain recorded, of what the Laws in question were, with "provision for execution and performance."* When some were for being satisfied with the fair messages of the King, and the assurances given by the Secretary of State, Sir Edward Coke stood up; proclaimed, with his giant might, the only sound and safe

* 1 Rushworth, p. 562.

Constitutional Principle; and demanded the putting up of a Petition of Right after the manner of our fathers. The following is the outline of his noble words, as but too lamely reported to us. "Was it ever known that general words were a sufficient satisfaction to particular grievances? Was ever a verbal declaration of the King *verbum regni* [a record of the kingdom]? When grievances be, the Parliament is to redress them. Did ever Parliament rely on Messages? They put up Petitions of their Grievances, and the King ever answered them, [that is, by putting, in his ministerial capacity, the Law, so violated, into motion again with respect to each matter of complaint.] The King's answer is very gracious, but what is the Law of the Realm?—*that is the question.* I put no diffidence in His Majesty; but the King must speak by a Record, and in particulars, and not in generals. Did you ever know the King's Message come into a Bill of Subsidies? All succeeding Kings will say,—Ye must trust me, as well as you did my predecessors, and trust my Messages. But Messages of Love never came into a Parliament. Let us put up a Petition of *Right.*"* And so the Petition of Right, drawn up by the Patriarch Coke himself,† was determined on. The Lords proposed an addition, which recognised a saving of some independent sovran power to the Crown, as numberless modern statutes, prepared by the ministers of the Crown and heedlessly endorsed by Parliament, unlawfully and most mischievously do. This the Commons resisted: and again the old man Coke stood up for the liberties of his country in this hour of great need and peril. "Look," said he, "into all the Petitions of former times. They never petitioned wherein there was a saving of the king's sovranty. Sovran power is no parliamentary word. In my opinion it weakens Magna Charta and all our Statutes; for they are absolute, without any saving of sovran power. And, *shall we now add it, we shall weaken the foundation of Law,* and then the building must needs fall. Take we heed what

* 1 Rushworth, p. 564; Tuesday, May 6, 1628.

† See 1 Rushworth, p. 565.

we yield unto. MAGNA CHARTA *is such a fellow that he will have no Sovran.*" *

The case of Borough "Charters" affords an illustration of these points. Much is often said about these, in entire ignorance of what their legal operation is. They are founded, altogether, upon the fundamental ideas of Local Self-Government which run through the whole spirit and practice of the Constitution. If, in any place, the inhabitants agree together to have that special form of united existence which is called a borough, it is their own affair; and, at the Common Law, it is their inherent right so to agree. Having thus agreed, they simply go to the Crown, as the head ministerial officer, and claim, as of common right, that it shall endorse their agreement, so as to make it matter of permanent record. It is purely in its ministerial capacity that the Crown has anything to do with such charters. The agreement of the inhabitants is their sole legal ground and support; and, by disproof of this, any Charter can be upset. The Crown has, legally, no discretion in the matter, any more than it has in the issue of any writ out of any of the Courts of Law, in any civil action between man and man. The capacity in which it appears in each case is precisely the same. Any Charter so granted is only good so far as it is consistent with the Common Law; and no authority of the Crown can make it good if it assumes to deal with any rights extending beyond, or affecting interests beyond, the district which has applied for it. Thus, if the Citizens of London agree to apply for a Charter relating to themselves alone, it is good and binding in Law. But, if such a Charter attempts to extend further, it is void, unless it have the sanction of the general legislative authority. This has been often tested. Thus, a so-called Charter was set up by the Corporation of London in 1835, touching the rights of the City in Smithfield Market, to the exclusion of any such market within a radius of seven miles round the City. But it was, as a matter of course, held that, in such case, the Charter endorsed by the Crown was but waste paper, unless

* 1 Rushworth, p. 563. May 17, 1628.

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it could be shown, positively or presumptively, that it had received the assent and consent of Parliament, and had so become a Statute.*

Thus, also, it is that Lord Coke says, of a certain Charter, "It may be the Charter was void in Law; or that it was procured by the lesser number of the burgesses; and then it might be removed."† And thus it was resolved by the already-named Committee of the House of Commons in the time of James I., with respect to a certain Charter which pretended to limit the Common Law inherent rights of all burgesses as to voting for Members of Parliament; "that the said Charter of Queen Mary did not, nor could, alter the form and right of election for burgesses to the Parliament. The Charter, although it may incorporate the town, which was not incorporate before, or may alter the name or form of the corporation there, in *matters concerning only themselves and their own* government, rights, and privileges; yet it cannot alter and abridge the general freedom and form of elections for burgesses to the Parliament, wherein the commonwealth is interested;—which is against the *general* liberty of the realm, that favoureth all means tending to make the election of burgesses to be with the most indifferency; which, by common presumption, is when the same are made by the greatest number of voices that reasonably may be had."‡

That the head ministerial officer should be compelled to swear to obey the law himself, and to maintain it through the realm, was a part of the mutuality of the contract by which he held office. From the oldest times this has been enforced in England.§ The old constitutional form of the Coronation Oath is peculiarly significant. It has been already quoted. The discussion which took place upon the meaning of one

* See "Government by Commissions," pp. 57, 60, 77; and "What is the Corporation of London, and who are the Freemen?" p. 21.

† 11 Reports, p. 97, (*a*), marginal note. See also 2 Inst., 47.

‡ Glanville's Reports, pp. 54, 55; and see ib., p. 66; also ib., p. 17.

§ Spelman's Glossary, 47; Bracton, Lib. iii., Tract 2, c. 3; &c. &c.

word in that oath, between the Long Parliament and Charles I.*—who himself took that oath with no material variation—forms a curious episode; and shows that such a matter was felt by both parties not to be, what it never ought to be, a mere form. These words of the oath taken by the Crown are at least as old as Edward I.†

Frequent allusion is made, on the Parliament Rolls, to the oath thus taken; sometimes even to the King being forced to acknowledge that he had not kept his oath, as in 14 Edw. III. stat. i., c. 15; 20 Edw. III., c. 1; &c. King James himself, in his speech to the Star Chamber in 1616, declared that;—"I was sworn to maintain the Law of the Land; and therefore had been perjured if I had broken it."

It is impossible to enter here into all the modes in which usurpation has been attempted by the Crown at various times. Some instances will hereafter come under notice. It has been since the Revolution of 1688 that the greater part of the mischievous doctrines and practices which systematically encroach beyond the true function of the Crown, have sprung up. In earlier times attempts were often made, but they were usually promptly met and stopped.

Among the doctrines which a sycophantic spirit has led some men to teach in later times, until, indeed, it is now generally accepted as a maxim of Law, is this;—that "the King can [that is, positively, not prohibitively] do no wrong;" and this is declared to be one of his high Prerogatives. It is hardly credible how such a mischievous doctrine should have ever grown up; and nothing can more strongly mark the prevailing ignorance on all Constitutional subjects than its acceptance. It cannot but be surprising that a man of

* "Exact Collection of Remonstrances," &c., 1643, pp. 268, 290, 706—715; Remonstrance of 26 May, 1648; the King's reply; and the Parliament's rejoinder of 2 November. The last contains some very curious facts, particularly how Henry VIII. attempted to alter the oath with his own hand. And see "Hutton's Argument," 3 Rushworth, Appendix, p. 168.

† Twysden, pp. 72, 106.

Mr. Allen's learning and acuteness should have noticed this doctrine,* and passed on without the slightest inquiry whether such is or not really the doctrine recognised by the Law of England.

No such doctrine is recognised by the Law of England. There is not, in the whole range of Constitutional inquiry, a point more clear and unequivocal; and it is well this should be thoroughly understood. It has already been seen that the Crown is subject to the Law, and bound by oath to keep within it. Without going at any length into the many older authorities that might be quoted, it is quite enough, on a doctrine of such extremely modern origin as this most servile, false, and unconstitutional one, to say that it was a doctrine of which Bracton, Lord Coke, Mr. Justice Crooke, and Lord Somers knew nothing; but each and all of them held expressly the reverse. There is, truly, an old maxim that the King can do no wrong: but that maxim was spoken, always, in the sturdy old Saxon tongue, and with the free-spoken meaning that he *shall* do no wrong. Bracton says:—"the King can do no other than he can do rightly; for his power is for doing right, not wrong. While he does right he is the lieutenant of God: but the minister of the Devil when he does wrong."† This is the very reverse, then, of a Prerogative maxim: it is a prohibitive maxim. And, what is remarkable, it is, in express terms, referred to by Lord Coke in this sense, and as an argument against a claim in which the Prerogative of Queen Elizabeth herself was set up. "The King *shall not be exempted*, by construction of Law," says he, "out of the general words of acts made to suppress wrong."‡ And Sir Geo. Crooke, one of the Judges of the King's Bench, in the celebrated Hampden case, expressly alludes to the same maxim for the same purpose; and cites other cases in which it had, in like manner, been held,—paraphrasing this maxim,—

* On the Royal Prerogative, p. 31. † Lib. iii., c. 9.

‡ Magdalen College Case, 11 Rep., 72; and see 74 (*a*); and 2 Inst., 681. See also case of Alton Woods, 1 Reports, 44. Numberless other authorities might be cited.

that the King's "Prerogative cannot be any warrant to do any wrong to any."* Coming nearly half a century later, we find Lord Somers saying of the Crown;—"He can do no wrong, saith the old maxim; *that is,* he can do nothing against the Law; nor is anything to be judged for his benefit that is not warranted by Law."†

It cannot but be thought to require some boldness to put forth such sycophantic doctrines in the face of so clear and unmistakeable an actual state of the Law and the Constitution. It affords, however, a good sample of the doctrines, and the grounds for them, of all the Prerogative Lawyers,—the truest enemies of the high dignity of the Crown, and the real underminers of the Loyalty of the People. It will, therefore, be unnecessary to notice more than one other instance of this sort of doctrine.

It is perpetually put forth that "the King is the fountain of honour." Perhaps no very precise meaning is attached to a phrase which so much resembles that of "the King can do no wrong." If it have any meaning, in a prerogative sense, it stands on the same footing, as to accuracy, with that other pretended maxim. It would be easy to bring up numberless authorities on this point. A few remarks will be enough.

When knighthood was the honour most highly prized by every man, be his rank what it might, it is well known to every reader of history that that title might be, and often was, conferred on the field of battle, by any leader. The King had the right of conferring it in common with other military leaders.

The Sheriff of a shire and the Mayor of a city take precedence, each within his range of office, of every nobleman of the land. These honourable offices are, neither of them, de-

* 3 Rushworth, 195. This place has a curious misprint in quoting Coke, which gives exactly a contrary meaning to the real one. Have any of the learned been misled by this?

† "The Security of Englishmen's Lives; or, the Trust, Power, and Duty of Grand Juries of England." 1681, p. 66; also reprinted, 1766, p. 49.

rived from the Crown. Every one knows that Mayors are, even at this day, elective. Constitutionally, Sheriffs are the same; and the right of the folk and people of the shire to elect the Sheriffs has been more than once declared by statute, in conformity with the Common Law and the old practice.* A statute passed in 9 Edward II. gave power to certain officers and the Judges of the Exchequer to appoint the Sheriffs. This seems to have been intended to meet special contingencies; and could not, according to the ordinary construction of Statutes, take away from the freeholders of the shire their right of election at Common Law. It has, however, been made the means of practically putting these important appointments into the hands of the Crown. Instances of disturbances raised by the Crown's attempt to interfere with the Sheriffs of the people's choice are on record. In these, the people, by means of their institutions of Local Self-Government, succeeded in resisting effectively the encroachments of the Crown. The Sheriffs of many places in England are still elective. Coroners also, another shire officer of high antiquity, are still, except where very late Statutes have interfered, elected by the freeholders, as of old.

And, constitutionally, this derivation of all offices of honour and dignity from the freemen, the obviously most honourable source of any dignity, is not confined to Local Offices. Offices of a general nature, the offices of state, are found to have been subject to the choice and approval of the Representative Assembly. To cite illustrations would be cumbersome, from the multitude which are at hand. It is sufficient to say that, while ordinarily the cases would not be recorded, we have it on record how Chief Justiciaries, Chancellors, and Lords of the Treasury were subjected to appointment and approval by Parliament, "according to ancient custom;"† Privy Councillors the same; Admirals the same: while the Ducal title itself, and the title and office of Regent and Protector, were

* See "Government by Commissions," p. 84.

† Matthew Paris, p. 778.

conferred by Parliament;* and instances of displacements from office, on the requisition of Parliament, are of frequent occurrence. Even the annual responsibility of the highest officers to Parliament is found insisted on.† The Crown's endorsement, as in the case of Borough Charters, was the formal mode of record of the appointments. Hence, probably, the source of this erroneously alleged maxim.

It has already been seen how the attempt made, more than 200 years ago, to add saving clauses to Statutes was dealt with. It is a device, however, very frequently had recourse to at the present day. It was well remarked by Noy, on the occasion referred to, that "to add a saving is not safe; doubtful words may beget an ill construction;"‡ and Serjeant Glanville well described such a clause as being "specious in show, and smooth in words, but in effect and consequence most dangerous."§

Many other attempts to give an illegal extension to the authority and influence of the Crown, through the opportunities its factitious position gives it, have at various times been made. Henry VIII. began a systematic attack on the independence of Borough institutions of Local Self-Government; which his successors carefully followed up. This was done by trying to get the controlling authority into the hands of small and select bodies in each borough. These would, of course, be more easily accessible and subservient to Crown influence than full and free Institutions of Local Self-Government. The design has been improved upon up to our own time, and never more so than within very recent legislation. Nothing can be more unlawful or mischievous. It has been seen that the Committees of the House of Commons resisted, and they successfully resisted, the attempt so far as it came within their cognizance.

There is another method of taking advantage of the factitious position of the Crown to outstep its lawful functions and

* Rolls of Parliament, 13 Richard II., No. 21.

† 15 Edward III., stat. 1, c. 3 & 4; and see 10 Richard II., c. 1.

‡ 1 Rushworth, p. 569. § Ib., 576.

authority, which is near akin to this last; inasmuch as, like it, the object is to secure, through the means of others, an influence and control which is not dared to be directly exercised. It consists in the assumption of a power, altogether unrecognised by Law and in direct violation of it, to delegate certain functions to different persons of its choice, to be exercised by them, in reference to special objects, in the name of the Crown.* The idea, justified by too fatal experience, is, that the mass of people will be misled, by the bold assumption of such a power, to presume that it is legal. It is thought the same jealousy will not exist of authority *delegated*, as would be roused by a direct attempt to exercise that authority; while, at the same time, the crafty and even more dangerous purpose is gained of attaching to the support of further usurpations the interests and influence of many individuals.

It is self-evident that this is a course infinitely dangerous. These usurping delegations, which go by the name of "*Commissions*," have not that responsibility which even the Crown has. The Crown is pledged by an oath. It evades the responsibility of the unlawful doings of these Commissions by the plea that they are not done by itself; while the Commissions evade all responsibility by the plea that they are responsible to the Crown only. They are bound by no oath to the people, any more than they are chosen by them.

This device, unlawful in itself, and opposed to the whole spirit and fundamental principles of the Common Law and the Constitution, is one which is, in reality, equally unlawful whether assumed to be done of the sole authority of the Crown, or pretended to be covered by an Act of Parliament. Parliament has it not within the scope of its powers to violate the fundamental law of the realm. It has been over and

* The pretended Commission appointing a body of Commissioners, by Royal Authority, to manage the great Industrial Exhibition in 1851, was one of these clearly unlawful Acts. The making such an unlawful attempt to impose on public credulity, showed little opinion of the earnestness of the originators, or of the soundness itself, of that project.

over again declared that all and every such Acts of Parliament are null and void. As a learned Judge declared, in reference to certain such Acts, they are, though pretending to be Acts of Parliament, "void, being against Law and Reason."*

It is within our own day that this unconstitutional and mischievous system has reached its greatest height. Over and over again has it been declared by Parliament to be unlawful, and a violation of the liberty of the land. It is a distinct violation of the entire principle and essence of what have been shown to constitute the function and office of the Crown.† Rightly was it felt by the moderate and sincerely loyal observers of events in the early part of the career of Charles I. that, if such Commissions, precisely analogous to those now existing and being daily increased and enlarged, were to be permitted, "England would be bound and not free."‡ Such Commissions are the machinery especially employed by Centralization. They are the rooters out of Law, which is the only safeguard of freedom. They are the swallowers up of the taxation and substance and enterprise of the land, by hordes of functionaries, irresponsible alike to the Law and to the people. They are "derived neither from law nor usage, but founded on a theory of monarchy imported from abroad,—subversive of law and liberty,—and alien to the spirit as well as to the practice of our Constitution."§

Well did Burke remark‖ of the encroachments thus gradually effected by the Ministers of the Crown, at a time when these had made little approach to the height which they have since reached:—"The power of the Crown, almost dead and rotten as prerogative, has grown up anew, with much more strength and far less odium, under the name of *influence*. An

* Mr. Justice Crooke, case of Ship-Money, 3 Rushworth, Appendix, p. 194.

† The whole subject of *Commissions* has been treated of, and fully illustrated in its Constitutional bearings, in "Government by Commissions Illegal and Pernicious."

‡ Twysden, 67.

§ Allen on the Royal Prerogative, p. 158.

‖ "Thoughts on the Causes of the present Discontents," 1770.

influence which operates without noise and violence, which converts the very antagonist into the instrument of power, which contains in itself a perpetual principle of growth and renovation, and which the distresses and the prosperity of the country equally tend to augment, is an admirable substitute for a prerogative that, being only the offspring of antiquated prejudices, had, moulded in its original stamina, irresistible principles of decay and dissolution."

Well would it be if some of the manly and independent spirit which served, through centuries, to keep a practical check upon the often-attempted encroachments of the Crown,* when made under the inadmissible pretences of Prerogative, were now alive and earnestly active to resist the far more dangerous encroachments which, in our day, are being systematically made upon the liberties of Englishmen, and the Law and Constitution of the Land, by these more silent means of influence, and under the numberless specious pretences and disguises which "the distresses and the prosperity of the country" are made equally to afford.

The sum of the whole matter is very short; but of the highest importance. The Crown is the mere creature of the Law. It is the ministerial office appointed to be the expression of the unity of the State in the maintenance of the Law. It has no independent existence; no independent authority. It has, neither directly nor indirectly, any legislative power. And any attempt, by itself or any of its creatures, to assume any authority superior to or independent of the law; or to delegate to any others, to be appointed by it, any powers or

* The declaration of the Judges, when importunately pressed over and over again, and by the Queen herself, to obey some letters-patent of Queen Elizabeth, is an example well worthy of quotation. They declared that, "though they desired in all points dutifully and humbly to obey her Majesty, in this case they could not do it without being perjured." "The Queen," said they, "herself, and the Judges also, have sworn and taken an oath to keep the law: and, if we should now obey her commands, the laws would not warrant us, and we should therein break our oath; to the offending of God, and our Country, and the Commonwealth wherein we were born." See Anderson's Reports, pp. 154, 155.

authority whatever, over the person, property, or actions of any of the people or any of the Institutions of the land,—either by way of inquiry, dictation, or direct or indirect control; is a violation of the only lawful functions of the Crown, and of the fundamental spirit and principles of the Common Law and the Constitution;—a direct invasion of the inherited rights, liberties, and responsibilities of a free people. The Crown is bound by, and is by its oath sworn to maintain, the *actual Law*. It has no discretion in itself: and it can delegate none. Its function is, simply, whenever occasion arises for putting that Law in action, to *set in motion* those Institutions of Local Self-Government which have existed in the land for untold centuries; by which alone that Law can be well and safely administered; and by the full and unfettered activity of which alone can the rights, and liberties, and the discharge of he responsibilities, of Englishmen, or of any free people, be truly and healthily maintained.

CHAPTER VI.

COMMON LAW.

A PHRASE has been already often used in these pages, which, in the proper discussion of constitutional questions, cannot be dispensed with. It is a phrase of deep meaning, and, in itself, of the utmost significance. It is, "THE COMMON LAW."

Without stopping to consider the many definitions of this phrase which may be found, the demonstrably true definition may be stated as follows:—

COMMON LAW *is that Law which* SPRINGS *immediately from the Folk and People themselves, and which is also* ADMINISTERED *immediately by the Folk and People themselves.*

Common Law, as a body of Laws, consists of the practical applications of certain General Principles, which, springing from the prevailing habit and temper of a free race, have, with these applications of them, grown into habitual usage throughout the land. They have that primary and all-sufficient sanction which is derived from the "common consent of those using them." From their origin, they necessarily breathe a spirit of freedom. It is a part of their own spirit and consequence that they shall be administered by the folk and people themselves, and not depend on the will or discretion of any having but a derived authority.

It will be needless, after what has been already said, to do more, now, than call attention, in the way of illustration, to a few of the numberless facts which bear upon this interesting point.

The Constitutional Coronation Oath has been already quoted;—by which the Crown swears to maintain those Laws and Customs which the folk and people shall have chosen;

that is, which they shall have heretofore determined, or shall at any time hereafter determine, as the "Commonalty," to be the "Common Law."

Glanville, writing nearly 700 years ago, speaks, as a matter of regular course, of those who were in the habit of meeting,—for a born slave might get among them by accident,—"to make some law of the land."*

William I., the misconceptions as to whom have been already touched upon, in the fourth year of his reign, on the advice of his "Barons" (a very ambiguous phrase, but immaterial to the present purpose†) caused twelve men to be elected by each shire in England, who were sworn that, turning neither to the right-hand nor to the left, they would set down the laws and customs of the land,—neither omitting, adding, nor distorting anything.‡ It is self-evident that the Laws and Customs thus to be set down were those which, in each shire, the Shire-mote had let itself be guided by.

The sound, and very ancient, maxim of Law "What concerns all must be approved by all" (that is, as expressed by a majority) has already been referred to.

The writ of election for members of Parliament, very ancient in form, though, unhappily, not now treated in practice as a reality, runs:—that two Knights are to be chosen from every shire, and two citizens from every city, and two burgesses from every borough within each shire, to come up, with full and sufficient power, *for themselves and the commonalty of the said shires*, and of the said cities and boroughs, individually, [divisim] to do and consent to what shall be ordained by the Common Council of the kingdom; and so that, for want of any power of that kind, or by undue election, such businesses shall not remain in any way undone.§ It has already been shown what the purposes of the General Assembly,—the Common

* Lib. v., c. 5.

† See before, ch. 5, p. 98.

‡ Wilkins' A. S. Laws, pp. 197, 291; and Ancient Laws and Institutes of England, Vol. i., p. 442.

§ See Crompton, Jurisdiction of Courts, p. 1 (*b*); Whitelocke on the King's Writ, Vol. i., ch. 1.

Council,—are. The form of this ministerial writ of summons adds an illustration how the folk and people are to be themselves cognizant of what is done by the representatives, and that nothing can be lawfully done but with their full and sufficient consent.

The oath of the Serjeant at Law,—the highest degree known to the legal profession, and formerly of much more importance and significance than it now is,—runs as follows:—"That he shall well and truly *serve the King's People, as one* of the Serjeants *of the Law*."* To understand this phrase it must be stated that the word *serjeant* is merely a corruption of the Latin *serviens*. The original title of a Serjeant is, "*Serviens ad Legem*;" and this oath embodies the fact that the serving—being obedient to—the Law can only, in truth, be identical with serving the people; and that the latter is, therefore, the special duty of a sworn "Serjeant at Law."

Every Institution of Local Self-Government has the inherent right to make such by-laws as it pleases for its own government, totally irrespective of any consent of Parliament or of the Crown. Bracton has already been quoted upon this subject.† Lord Coke tersely, but admirably, puts it:—"Of more force is the agreement of the folk and people than the grant of the king."‡ And elsewhere;—the "inhabitants of a town, without any custom, may make ordinances or by-laws for any such thing which is for the general good of the public,"§—unless indeed it be pretended, by any such by-law, to abridge the general liberty of the people, their inherent birthright, assured to all by the Common Law of the whole land, and which that Common Law, in its jealous regard for liberty, does not allow to be abrogated or lessened even by their own consent—much less, therefore, by the consent of their delegates in Parliament.‖

* Coke, 2nd Inst., p. 214. † Ch. ii., p. 27.

‡ 8 Reports, p. 125. § 5 Reports, p. 63.

‖ See 5 Reports, p. 64; and see Burrow's Reports, pp. 1833 & 1839, 40; 2 Inst., 47; Glanville's Reports, pp. 54, 60, 142; also Jeffrey's Case, 5 Reports, p. 67, &c.; and see a very remarkable and illustrative case cited by Justice Crooke. 3 Rushworth, Appendix, p. 184.

A jury,—which is but the committee for and in the place of the whole of the folk and people of any particular Institution of Local Self-Government,—may take upon itself to declare the Law as well as the fact, if it pleases;*—which is in precise accordance with the passage before cited from Bracton.† Indeed the Common Law, practically speaking, means, in a vast range of cases, the finding of a jury on a given state of facts.

The Common Law, from its origin, is always favourable to liberty. That, indeed, is its great and noble characteristic. It is highly important that this should be understood and thoroughly appreciated. With the phrase "Common Law," is identified the whole idea of freedom and free institutions. It includes the whole of that great inheritance, the maintaining of which unsevered is the only means of maintaining the rights, liberties, and character of Englishmen.‡

Much that is often set down as "a rule at Common Law," must not be confused with it. It is the distinguishing peculiarity of the Common Law that it deals in broad and fundamental principles only; in general principles sprung from the healthy activity of the thoughts and conscious responsibility of free men,—and therefore which no time can make grow old; and which must be applied to individual cases according to the exigency, and by means of those free institutions under which itself has grown up. In this it proves its true foundation and logical worthiness. Numberless examples might be given. One will be enough by way of illustration.

It is a fundamental principle of the Common Law that there shall be no gain to any one man at the expense of his neighbours. While, on the one hand, this is applied to Charters and Patents from the Crown, so that they are of no validity

* Littleton's Tenures, § 368.

† Lib. i., ch. i., § 2. See before, ch. ii., p. 27, and after, ch. xviii., *Trial by Jury*.

‡ See before, p. 15.

if they impose any tax, burthen, or prejudice upon any one,*—but are absolutely void;—so, on the other hand, if any private man sets up any trade, or commits any act, which is, or is likely to be, an annoyance or injury to his neighbours, that act is unlawful, punishable, and preventible for the future. Hence every question connected with the Public Health becomes immediately cognizable by the Common Law. But another fundamental principle of the same Common Law requires, that every thing that comes in question shall be determined by the full and responsible activity of Institutions of true Local Self-Government.† It thus most wholesomely throws it upon those who allege any particular thing or course of proceeding to be inconsistent with the health of any neighbourhood, or its welfare in any respect, to bring forward the proof, before the people themselves, that it is as alleged. Thus comes the solid test of sincerity, earnestness, and truth. If, instead of resting on any true regard for the Public welfare, what is sought is really, under the specious disguise of such pretences, to gain some interested object, or to enforce some crude individual notions, without taking the trouble of demonstrating their truth, it is very obvious that it would be self-defeating to attempt to prove the allegations before the folk and people. Hence recourse is now systematically had to Crown-appointed Commissions. Hence the favour Centralization finds in the eyes of all interested schemers.

No honest man can do otherwise than feel, from a single illustration like this, how important it is that the principles of the Common Law should be understood and sacredly respected. Their essence is, that it behoves the people themselves to mind their own affairs; neither neglecting them through slothfulness, nor letting themselves be beguiled, on

* See 11 Coke's Reports, p. 86, and see the Writ *Ad quod damnum* in Fitzherbert's Natura Brevium, § 140, pp. 221 (*b*), 226 (*b*); a writ the very existence of which might alone be the text for a volume; and which affords demonstration of the whole point which the present volume is intended to illustrate, of the foundation of the English Constitution being laid in the principles of Local Self-Government.

† See the Writ *Ad quod damnum*, as in last note.

any pretences, or by any assumed authority, into allowing individuals or functionaries to presume to do for them that which, as intelligent and responsible members of a free state, it is their highest privilege and first duty to do for themselves and by themselves; in the doing of which they will always gladly avail themselves of the aid of all the light which, having been brought before them by those who are earnest in the search for means of human improvement, they are themselves satisfied is really applicable to each special case in hand. Of such true applicability the first test must, self-evidently, be, whether the matters alleged are able to be thus brought within the clear comprehension of those who, it is pretended, are to be benefited by the application.

The general understanding of the Common Law, which should be familiar to every freeman, has been much hindered, as well as the purity of the fountain corrupted, by the practice, extraordinarily increased of late years, of the Judges assuming to themselves the entire interpretation of the Law. This has grown up through the falling so much into practical abeyance of Institutions of Local Self-Government, whose true province it is to declare the Law; * and through the accompanying decline, in practical vigour, of the Jury system. It is clear that, if the Judges may interpret the Law, they practically make it. Much so-called "law" has been, by this means, made within the last century; founded on narrow views and subtle refinements; and at total variance with the spirit and practice of the true Common Law. It is an evil which calls loudly for remedy.

So deeply-rooted is this evil now, however, that many of the most successful lawyers in our day in Westminster Hall are,—not those who have studied the foundations of our Institutions, and the general Principles of law, and who have best well studied to "serve the King's People,"—but those who are readiest with collections of recollections, the sayings of different Judges on special occasions, and in reference to

* See "Corporation and Freemen," pp. 14, 16, &c.

numberless fine-drawn and generally meaningless distinctions. No sooner, however, shall the fundamental principles of the Common Law itself be generally understood and asserted, than,—such is its inherent vitality,—without the aid of any empirical legislation, it will again be the Common Sense of intelligent Juries of the folk and people that will insist upon deciding, for itself, in every case,—and without submitting to the clearly unlawful dictation of any Judge,—as well what evidence bears upon any case brought before them, as upon the bearings of every case itself, as regards any of those simple but fundamental principles which every freeman may and is bound to understand, and which make up the substance of that invaluable inheritance, the Common Law of England.

CHAPTER VII.

STATUTE LAW.

It has been shown that Common Law is that law which springs immediately from the folk and people themselves, and which is also administered immediately by the folk and people themselves.

Statute Law, on the contrary, *is that Law which is made by a Body existing and acting by virtue of a derived authority only.*

While the Common Law is identified with the spirit of freedom, and with free and responsible action, it is obvious that there will always be a tendency in Statute Law to encroach on free Institutions, and on free and responsible action. Men intrusted with authority naturally seek to strengthen and enlarge it. The perfection of a system of derived legislative authority,—that is, of Representative Institutions,—must therefore consist in sufficient safeguards being provided that they shall, on the one hand, never become mere tools to carry out usurpations by the Crown, and, on the other, that they shall themselves never forget that they exist and act but by a derived authority, which owes allegiance to that higher primary authority whence it springs. In the next chapter some of these safeguards, as provided by the English Constitution, will be considered. Attention must now be fixed on some of the general characteristics of Statute Law, considered in itself.

Notwithstanding the tendency already noticed, and which it requires ceaseless watchfulness to guard against, it is perfectly possible for Statute Law to be kept in thorough consistency and harmonious action with Common Law, and with Free Institutions. So kept, it will be often highly beneficial.

Under all the varying circumstances which time and invention bring on, matters of general regulation, concerning internal affairs and foreign relations, will necessarily be sometimes needed. These are the province of Statute Law. So, also, are all occasions needing, like the Petition of Right, the public re-declaration of certain fundamental principles of the Common Law, in consequence of their neglect or invasion. But no matters of Local regulation are within its province; nor can they rightly ever come under its cognizance, except where doubtful interests, beyond the circle of one of those Institutions, come in question.

It is essential to a lawful and binding Statute that it be made "by the common consent of the whole realm," and that it be "for the common benefit of the whole realm."*

It is essential that it should be made by the assembly of those specially appointed for that purpose; and not by any assuming to derive power from Crown-appointment, or claiming any independent authority. Thus, in the 51st Edward III., we find the following record, in full accordance with the Common Law; which latter ought always to be the guide and test of Statute Law.

"The Commons desire that no Statute nor Ordinance shall be made or granted at the petition of the Clergy, unless with the assent of the Commons; and that the Commons shall not be bound by any Constitutions which are made for their [the Clergy's] advantage, without the assent of the said Commons. For they do not choose to be bound by any Statutes or Ordinances made without their assent."†

And again, in the 2nd Henry V., it is declared by the Commons, that "it hath ever been their liberty and freedom that there should no Statute nor Law be made otherwise than they gave thereto their assent."‡

Innumerable illustrations of the same point might be added.

* Coke, 2 Inst., p. 529.

† Rolls of Parliament, 51 Edward III., No. 46.

‡ Rolls of Parliament, 2 Henry V., part 1, No. 22; see also "Parallels between England and Hungary," p. 67.

And these were not mere words of course, as they have become in later times; but they expressed an earnest reality.

It has already been seen that the writ for election of the Representatives expressly declares the presence of the Representatives of all the shires, cities, and boroughs to be needed, lest, by reason of the absence of any, the businesses should remain undone. These businesses are, as well the considering and settling general administrative affairs, home and foreign, as the framing of any Statutes by which the spirit of the Law may be the better maintained or any grievances redressed.

No true derived authority can ever, then, it is clear, exist, unless the institutions of Local Self-Government exist in full activity. Without these to give a lawfully derived authority, and to watch jealously its exercise, Statute Law necessarily becomes mere arbitrary ordinance, checked only by the weak and capricious restraints which temporizing expediency may suggest.

Statute Law will always necessarily be inferior, in character and in authority, to Common Law. For, *First;* its sanction is less authoritative. It is clear that an authority derived from others must always be inferior to the authority whence it is derived. *Second;* Statute Law, to be legitimate, must always be but illustrative of the broad and fundamental principles of the Common Law.* When Statute Law assumes, either openly or stealthily, to over-ride Common Law, the fact affords in itself evidence that usurpation is going on, and that the liberties of the nation are in danger. It has been seen that even self-consent cannot authorize any abridgment or violation of the rights and liberties which the free genius of the Common Law guarantees to all.† Much less, then, is it possible for this to be done, lawfully, by any delegated or derived authority.

The Administration of Statute Law must always remain according to the Common Law; that is, in the folk and people. Parliament can neither delegate the functions which

* See "Government by Commissions," p. 36. † Before, p. 114.

only by derivation belong to it, nor can it take away the administration of the Law from those to whom it belongs; and the retaining of which administration in their own hands is the most important means to the laws being thoroughly understood and appreciated by those who use them.

Whatever Statutes are made, therefore, the lawful object, and the lawful means, can only, constitutionally, be,—to set forth clearly any special mode of machinery which some special exigency may require, in order that a particular range of matters shall, as they arise, be brought thoroughly within the operation of the principles of the Common Law. Local administration and local responsibility must never be interfered with; but will, on the contrary, unless Statute Law be traitorously perverted, have increased opportunity given for their healthy development by every exigency that arises. When Statutes attempt to dictate for contingencies, or assume to authorize any controlling power, or seek, by minute detail, to take off responsibility from those to whom it belongs to administer their own affairs as they arise, they will always necessarily prove not only failures but mischievous. They may, for a time, serve the purposes of the self-interested few who would place trammels on free thought and action and responsibility; but they can have no character of permanence, and can never claim the respect or obedience of any independent man. They are but drag-chains upon progress, upon enterprise, upon discussion and responsibility; immediately demoralizing, therefore, and degrading, to the extent to which their application reaches, and, beyond that, in their indirect influence in lessening that general sense of responsibility and self-respect, the constant consciousness of which alone makes the free man.

Common Law is always, from its very origin, practical. Statute Law may be, and its tendency, unless jealously watched, is to be, theoretical. Under this tendency lies hidden one of the forms and dangers of centralization. Theoretical anticipatory legislation * is centralization in one of its

* Let not the reader confound this with what has been already said,

most offensive and mischievous forms. This will be seen from a consideration of what have been already shown to be the essentials of Local Self-Government.

In asserting the supremacy of Common Law over Statute Law, and the existence of certain requisites to the making of a lawful Statute, it will of course be understood that it is spoken in a Constitutional sense. As in the case of the Crown itself, the origin of the authority derived from the folk and people is apt to be forgotten, and consequently to be unlawfully abused. Statutes have, unquestionably, been often got to be put upon the Statute Book which do violate the Common Law, and which have not had regard to these requisites. But their having gone through certain forms, and the possession, by individuals in authority, of the means to enforce them for a time, do not lessen their unlawfulness. These facts become but evidences of the necessity there is that freemen should never forget the rights and responsibilities that belong to them, nor cease from their watchfulness over those safeguards by which alone the derived authority can be kept in harmony with that higher authority whence it springs.

There is a prevalent notion that an Act of Parliament is something supreme. It is a mistake. The Constitutional principle does not allow of such a cover for mere despotism. Not only does every high Constitutional authority distinctly affirm that there are Fundamental Laws which no Act of Parliament can lawfully violate, but instances are not rare in which it has been declared, in the most authoritative manner, that certain Statutes, or Statutory Acts, are, or would be, unlawful. That this was long practically felt has been elsewhere proved.* It will be enough to mention one case here, by way

pp. 8 & 9. There is, in fact, nothing more antagonistic to the idea of Fundamental Laws and Institutions than the pedantic course of theoretical anticipatory legislation.

* "Government by Commissions," pp. 43—6, and note to page 44; and ib., pp. 235—249; to which the reader is specially referred for several important illustrations of this subject; and before, Justice Crooke, p. 109.

of illustration. "An Act in 11 Rich. II., c. 3, that no man against whom any judgment or forfeiture was given should sue for pardon or grace, &c., was holden to be unreasonable, without example, and against the Law and Custom of Parliament; and therefore that branch by authority of Parliament was adnichaled and made void."*

Very curious illustrations might be given of the necessity formerly and most properly conceived to exist for proving a Statute to be consistent with "right, law, and reason," before it could be shown not to be "defeasible at all times."† The one security for peace and freedom which it is essential that freemen should always have and feel is, that there are Fundamental Laws and Institutions, clear and unmistakeable, the birthright and inheritance of every Englishman; which it is the first duty of every man to assert and maintain, however much usurpation, either in the name of the Crown or of Statute Law, may have succeeded for a time in violating them. Those Fundamental Laws and Institutions always afford a clear and unequivocal test by which the lawfulness of any Statute may and ought to be tried. Where the study of the Constitution of the land is neglected, no man can wonder at the aspect which modern Statute Law puts on. But the evils which have grown up, and now exist, only call the more strongly upon every free man, who would resist the encroachments of despotism in any shape; and who would resist Centralization in its most dangerous (because its apparently most authoritative) form; and who would maintain the spirit and the practice of Free Institutions; to insist continually on the necessity of Statute Law being always kept in harmony with Common Law. This can only be accomplished, both as to the making and the administration of it, by the renewed activity of those true Institutions of Local Self-Government which are the life and the reality, the assertors and the administrators, the embodiment and the depositories, of the Common Law of England.

* Coke, 4 Inst., 42.

† Rolls of Parliament, 21 Richard II., No. 64; 1 Henry IV., ch. 3, &c.

CHAPTER VIII.

CONSTITUTIONAL SAFEGUARDS.

It has been seen what Common Law is. It has been seen what Statute Law is. It has been seen that there will always be a tendency in the latter to outstep its proper limits; and that the only way in which Common Law and Statute Law can be maintained in harmony, is by the maintenance in full and healthy activity, of true Institutions of Local Self-Government.

And now arises the practical and important question:—How will the activity of these Institutions operate to keep Statute Law in harmony with Common Law? The answer involves the consideration of what may be well grouped under the name of CONSTITUTIONAL SAFEGUARDS.

It is not easy to exaggerate the importance of the topics connected with this inquiry. There is no branch of the present subject more calculated to lower the pride and boasting of those who are apt to sneer pityingly at the condition of our fathers, and to talk of the progress and enlightenment of our own age. Verily will every man feel, when he has thoughtfully studied the facts connected with this topic, that "it is liberty that is ancient, despotism that is modern;" that we are fast going back, instead of forward, in the matter of political and social science.

It is clear that, unless usurpation is to ride rampant, there must be some practical means provided as safeguards against the invasion of the Fundamental Laws of any land by those who may be intrusted with authority. Different modes of accomplishing the end may be contrived. There is only one mode which can be sound, satisfactory, and lastingly effectual.

In the United States of America there exists a "Supreme Court," to which are committed the determination of all cases in law and equity arising under the Constitution; the adjudging of whether or not any Act of Congress, any Act of the Legislature of any individual State, or any part of its separate Constitution, is repugnant to the Constitution of the United States: and the determination, on any of these important points, of that Court, which consists of only seven persons, of whom any four make a quorum, is final and conclusive.*

This plan of a Supreme Court has been much praised; and there are those who have wished to see something like it introduced in England. But, however well it may appear to work for a time, where there is a written Constitution, whose letter is the point always nominally to be referred to, it is open to the most grave fundamental objections in itself, and these objections render it entirely inapplicable to a case where the Constitution of the country is unwritten in a series of modern phrases, but breathes through centuries of the earnest practical assertion, by free men, of their liberties.

The Courts of Law of this country have already done immense mischief to the cause of human development and the activity of Free Institutions, by the assumption of a power of declaring the Law in a manner which does not belong to them;† and by narrowing down its free and expansive spirit more and more from time to time, very agreeably to the purposes of centralization, but in entire antagonism with the spirit of the Common Law. Happily there is in England no Court of Law which is supreme. It is clearly dangerous, beyond exaggeration, that four individuals should be intrusted with power to determine, finally and absolutely, what is, and what is not, consistent with the Constitution. It may well be supposed that two Houses of Legislature, attentive to their duties, are far more likely to come to a right conclusion upon such points than any four individuals can ever be.

* Kent's "Commentaries on American Law," vol. i., pp. 297 & 313

† See before, ch. vi., p. 117.

A "Constitution" is of little worth if it can only be understood by lawyers, and expounded by Courts of Law.

The reason no Representative Assembly can ever have other than a secondary power, is, because it exists only by a derived authority. But this applies with far greater force to any permanent Court of four or any narrow number of persons. The appeal is not, in the latter case, from the derived authority to the source whence it springs; but to another, also merely derived authority, still further removed from the original source. This is illogical and practically absurd. It may work well for a time where there is, as in the United States, the letter of a written recent Constitution. But it has, in itself, the elements of decay; and it is, even for a time, utterly unadapted to countries where, happily, no such letter exists, but the nobler and truer reality of a Common Law.

Such a plan overlooks, moreover,—and this is the fundamental objection,—all reference to the only true test, the *Source* alike of the Common Law and of the authority from which Statute Law springs.

The practical Constitutional system of England has provided Safeguards which are free from these objections. And it is important to remark that, however much any one of these may have been let fall into disuse, or have degenerated into a mere form, they all have that inherent vitality and truth, that each one can be applied again with as full efficiency as ever, so soon as a single earnest man shall be found in Parliament to demand their application, and shall be supported in that demand by his Constituents. They are founded in human nature, not in any artificial and pedantic scheme of a phrased and written Constitution; and they are equally adaptible, therefore, to any stage of human progress.

It has been seen that the highest Constitutional writers have always considered that the power and authority of Parliament have their limits. Coke declares that "Innovations and Novelties in Parliamentary proceedings are most dangerous;"* that, "as every Court of Justice hath laws and

* 4 Inst., 11.

customs for its direction, so the High Court of Parliament has its peculiar laws and customs;"* and that its authority works well, "always provided that both Lords and Commons keep them within the circle of the Law and Custom of the Parliament."†

The circle of these Laws and Customs, travelled far out of since Coke's time, is, the mutual relations between the Representative Assembly and the Institutions of Local Self-Government. It is the practical mode in which these relations are maintained, that makes up the body of true Constitutional Safeguards;—effectual to hinder all liability to the caprice of individuals or to be overborne by the weight of ministerial influence; but, and habitually, imbuing all minds, Representers as well as Represented, with a wholesome sense of the responsibility that lies on all to weigh well every matter that concerns them; and, only after the well-matured consideration, by all, hence obtained, to let there be put into the shape of Statute Law what is found consistent with, and only as a further practical development of, the Common Law.

Of these Safeguards there are two classes. The first are of a *primary* nature, relating to the Institutions themselves which are the source of all authority, and whose special business is the assertion of the rights and responsibilities of freemen. As these Institutions have been already touched on with some fulness, and will have, in some of their details, to be again considered, the special Safeguards relating to them may be here passed by with a brief enumeration.

I. Frequent, fixed, regular, and accessible Folk-motes, to which all freemen shall come, and discuss all matters both of local and general interest.

II. Open elections of all Local Officers, and of the Representatives to the Local and General Assemblies, in full folk-mote, and without any delayed Poll.

III. The frequent elections of all Officers and Representatives.

The other class of Safeguards may be called *secondary;*

* 4 Inst., 15. † Ib., 35.

not by reason of their little importance, but inasmuch as they have special reference to the existence of a body having a derived authority only. Their nature shall be as shortly stated as can be done consistently with the hope of making themselves and their practical importance understood. It must be remembered that the main object of all these is,—not, like the primary ones, to *assert* rights and responsibilities, but,—to prevent encroachments by those holding a deputed authority, and to maintain Statute Law in harmony with Common Law.

I. Frequent and regular meetings of Parliament.

Attention has been already called to the frequent assertions of the necessity for this; and to the Statutes, among others, of 4 Edward III., c. 14, and 36 Edward III., c. 10, requiring Parliaments to meet each year once, and oftener if need be. It has also been called to the 7 Henry IV., c. 15, by which it was, as "declaratory of the ancient Law and Custom of Parliament,"* declared that the elections should be made, notwithstanding any prayer or commandment to the contrary, and also without any commandment of the King, by writ or otherwise. Of this Act the Statute 16 Charles I., c. 1, was but a re-declaration. The latter was repealed by 16 Charles II., c. 1. But the principle thus violated has been still more daringly, unconstitutionally, and mischievously departed from, for the first time in English history, by the "Septennial Act" of 1 George I., Statute 2, c. 38, passed so late as 1716.

II. Each member being the representative of some Associated Body, which is itself a true and active Institution of Local Self-Government, having all its own local interests under its own control, and a separate part in the general interests of the whole nation.

Provision has often been made against any person holding any official post under the Crown having a seat in Parliament. It does not seem, however, that there can be any propriety in thus attempting to tie up the hands of any open-eyed body of

* Coke, 4 Inst., 10.

electors. If, being fully alive to all the facts, they deliberately choose such a man, there is no question that the Safeguards now considering will prevent his being able to pervert his trust. And, while the influence of the Crown is, as now, so much greater, and much more dangerously so, indirectly than it is directly, through the all-spreading system of Commissions, it were vain to think to make the House of Commons any purer by weeding out those few who happen to be in the *direct* service of the Crown.

It has already, under the primary head of Safeguards, been stated that all elections must be made "plainly and openly,"* in open folk-mote, without any delayed Poll.

How important this actual representation has been always felt to be, appears many times over on the Rolls of Parliament; as may be seen, for the sake of an illustration, when, in the 7th Henry IV., c. 15, complaints are made of undue elections, "to the great slander of the Counties, and hindrance of the business of the Commonalty in the said Counties." Other illustrations will hereafter be named.

III. The constant and regular attendance in their place in Parliament of all the Members.

"When there is best appearance [fullest number]," says Coke, "there is the best success in Parliament."† It speaks for itself that no measure can be binding or satisfactory which, while assuming to be the act of the House of National Representatives, is, in reality, the act of a small fraction of that House. Such a practice as the latter is quite recent in England. It was not permitted of old. The Speaker very properly required every Member, each day during the Parliament, to be in the place of meeting by eight o'clock A.M. at the latest.‡ And no Member could depart

* "*Distincte et aperte*" are the express words of the very ancient Writ of Summons.

† 4 Inst. 1.

‡ Rolls of Parliament, 5 Henry IV., No. 8; 7 & 8 Henry IV., No. 8; 11 Henry IV., No. 5; &c.

from Parliament without special licence from the House, under heavy penalties.*

A remarkable illustration of this Safeguard was afforded in the 39th year of the reign of Henry III.; when the Parliament refused to grant the King any aid, on the express ground that all were not present who ought to have been summoned.† And it is expressly stated in the ancient document called "*Modus Tenendi Parliamentum*," that, if any aid (that is, tax) is to be asked, it must be asked in full Parliament, and it is needful that all the Members consent.

Attention has already been called to the terms of the Writ of Summons to the Parliament.

Fortescue, having alluded to the way in which Statutes are made in other countries, "where sometimes the Statutes do so procure the singular commodity of the maker, that they redound to the hindrance and damage of his subjects," says:— "But Statutes cannot thus pass in England; forasmuch as they are made, not yet by the Prince's pleasure, but even by the assent of the whole Realm. And it cannot otherwise be thought but that they are replenished with much wit and wisdom, seeing they are ordained, not by the device of one man alone, *nor of a hundred wise counsellors only*, but of *more than three hundred chosen men*."‡ The number of members that made up the House of Commons when Fortescue wrote is here expressed; and the attendance of all, as absolutely essential to the making of binding Statutes, is very strikingly asserted by the Lord Chief Justice and Lord Chancellor in this passage.

The monstrous usurpation and mockery of pretending to be able to pass laws while only forty members are present was then unheard of. The attempt would have been treated, as it deserves to be, as an insult to common sense, a contempt for common decency, and a violation of common honesty.

"Though regularly it be true," says Prynne, "that forty mem-

* See not only *Modus Tenendi Parliamentum*, but all the old Treatises on the Law and Custom of Parliament.

† Matthew Paris, p. 785.

‡ *Fortescue de Laudibus*, ch. xviii.

bers are sufficient to make a Commons' House, to begin prayers and businesses of lesser moment in the beginning of the day, till the other Members be come and the House be full, yet *forty were never, in any Parliament, reputed a competent number to grant subsidies, pass or read bills, or debate or conclude matters of greatest moment;* which, by the constant rules and usage of Parliament, were never debated, concluded, passed, but in a free and full House, when all or most of the Members were present."*

This Safeguard is one of the highest importance to the prevention of mischievous legislation. The greater part of the latter is done in small and packed Houses, and by numbers too contemptible to command any authority or respect.

It has already been remarked that every Member of Parliament is entitled to his wages as a public servant. The demand of constant attendance is, therefore, even on this ground, one which any constituency can, with every force, insist upon. It must be remarked, however, that, when a public duty is voluntarily undertaken, the existence of no such motive is needed to entitle those concerned to claim the full discharge of that duty at the hands of the undertaker.

IV. The holding conference by the Representatives with those whom they represent, on every matter on which doubt exists.

In the 13th Edward III. the King asked Parliament to grant him certain money-votes. The Lords granted it: but the Commons gave an answer which is very remarkable, and which shows, completely, in what a state of true activity the Institutions of Local Self-Government then were, and how thoroughly the relations of the Represented to their Representatives were maintained; so that, by no sycophancy or subserviency in the latter, could the people be defrauded of their liberties. The following was the substance of the answer given to that powerful and spirited King:—"The Commons have well considered the estate of the King, and

* "A Legal Vindication of the Liberties of England against illegal Taxes and pretended Acts of Parliament," 1649, p. 9.

the necessity for this vote, and know that the King needs it. But, notwithstanding that they would that this aid should be granted, in this case they dare not assent until they have conferred and advised with the Commons in the country. Wherefore they pray that a Parliament be summoned again at an early day;—and, in the mean time, every Member will go down into his own part, and use all his endeavours to get the King's request agreed to." *

"It is the *law and custom* of the Parliament," says Coke,† "that, when any new device is moved on the King's behalf in Parliament, for his aid, or the like, the Commons may answer, that they tendered the King's estate and are ready to aid the same, only in this new device they dare not agree without conference with their countries; whereby it appeareth that such conference is warrantable by the law and custom of Parliament."

Many Rolls of Parliament, of older and later times, might be quoted in further illustration of this important point. What has been cited will be sufficient to indicate how, while the system of Local Self-Government was active, taxes could not be granted without the pulse of the people, in every local associated community, being actually felt as to each demand; and taxes were, in consequence, over and over again asked, and very properly refused. Even though the Members of Parliament promised their efforts to persuade their Constituents to assent, they dared not vote the money without that assent. Every man thus knew what taxes were asked, *and what for;* and, by the local system (not, as now, centralized) of collection, had the matter further brought directly home to him. At the same time no Member was allowed to have any hand in the levying of the aids voted.‡ None of the jobs or

* Rolls of Parliament, 13 Edward III., Pars. I., No. 8; and see 2nd Parliament (under *new Writs)* of the same year, No. 6. See also ib., 5 Richard II., Nos. 35, 36, 37; &c.

† 4 Inst., 14.

‡ See Rolls of Parliament, 22 Edward III., No. 24; 45 Edward III., No. 43; 2 Richard II., Second Parliament, No. 51; 13 Henry IV., No. 10, &c.

Commissions of modern times could, therefore, be used as bribes to Members to join in a Ministerial Vote.

The manner has been already alluded to in which, after the Members have conferred with their constituents, and afterwards themselves consulted well together,* Committees should be chosen "to frame the laws upon such bills as are agreed upon," and which have "afterwards to be ratified by the Houses."†

Lord Coke, himself for many years a Member of the House of Commons, and intimately familiar with its practice, and who lays down so broadly the Safeguards already named, has the following passage;—which supplies a better answer than any mere argument, should it be suggested that any practical hinderance can arise in the way of wholesome and well-considered legislation (the only style of legislation that any free people ought to tolerate) by the insisting on these Safeguards. "It is an observation proved by a great number of precedents," says he, "that never any good bill was preferred, or good motion made in Parliament, whereof any memorial was made in the Journal Book, or otherwise,—though sometimes it succeedeth not at the first, yet hath it never died, but, at one time or other, hath taken effect; which may be a great encouragement to worthy and industrious attempts."‡

V. The reporting back by the Representatives to those whom they represent, what has been done on each matter.

In the 14th Edward III., the King, using the common device for getting assent to more taxation, represented to Parliament his urgent necessities, and how he would be dishonoured for ever, and the country ruined, if votes of supplies were not immediately passed.§ The Parliament, however, took the matter very coolly. Having calmly and thoroughly considered the demand, they admitted the importance of some supplies: but they would not pass any vote until they had

* See Rolls of Parliament, 13 Edward III. (2nd Parliament). No. 6.

† Smith's Commonwealth, p. 38, ed. 1621.

‡ 4 Inst, 32.

§ Rolls of Parliament, 14 Edward III., No. 5.

had the opportunity of going down to confer with their constituents. A second Parliament having met the same year, under new elections, a report was made by a Committee upon the mode of raising supplies. It was received and adopted by Parliament; and was then expressly ordered to be "reported by the Knights of Shires to their countries."*

Other similar illustrations of the recorded obligation felt by the Representatives, to keep the Represented immediately acquainted with every important proceeding, might be quoted. It will be enough to add the form of order which, on important occasions, even the Long Parliament,—as great a usurper (after its vote of perpetuity) as ever ruled in England,—felt itself obliged to adopt:—

"Die Veneris, xi Februarii,
1647.

Ordered, by the Commons assembled in Parliament, that a competent number of this Declaration be printed for the service of the House. And the Knights, Citizens, and Burgesses, and Barons of the Cinque-Ports, that serve for the several Counties, Cities, Boroughs, and Ports, are required to send copies thereof, to be published and dispersed in the several and respective places for which they serve.

H. Elsynge, Cler. Parl. Dom. Com."†

VI. The reading and publishing of every Act of Parliament by the Sheriffs in their Shire-motes, and by the other respective head ministerial officers in their various Institutions of Local Self-Government.

"It is to be known," says Lord Coke, "that, of ancient time, when any Acts of Parliament were made, *to the end the same might be published and understood*, especially before the use of printing came into England, the Acts of Parliament were engrossed into parchment; and bundled up together with a writ in the King's name, under the great seal, to the Sheriff of every county, to command the Sheriff to proclaim

* Rolls of Parliament, 14 Edward III., 2nd Parliament, No. 11.

† From an original in my possession.

the said Statutes within his bailiwick, as well within liberties as without. And this was the course of Parliamentary proceedings before printing came in use in England,—and yet it continued after we had the print, till the reign of Henry VII." *

One of the most absurd, but most mischievous and oppressive, of the fictions of modern times is, that every man knows and assents to all the laws that are passed, and therefore is bound by them. In this, as in other matters, our fathers dealt, not in fictions, but in realities. They did not choose that any law should be passed without the knowledge of it being brought immediately home to every man. An effective check is thus, very clearly, put upon the making of Statutes which no man can understand, and whose tedious and mystifying length can reflect only on the folly and incapacity of those who introduce them and those who sanction them. Let the freemen require every Statute passed to be read over by the Sheriff in the Shire-mote; and very soon will an alteration in the style of law-making be required alike by listeners, Sheriffs, and Members of Parliament.

The excuse for leaving off this sound and important Safeguard was the invention and use of printing. But it is self-evident that it is one thing for the mere power to exist of reading statutes, if people can find out what they are, and please to purchase them; and another and a very different thing for every Statute to be brought immediately home to the knowledge of every man as a matter of regular course; and, when so read, to have its meaning and merits discussed. Who is there that does or can now read the printed Statutes through, or could understand them if he did so?

It is a remarkable fact, and well worthy to be thought on, that the date when the proclamation of Statutes in the Shire-motes, &c., stopped, marks also the date when the wording of Statutes in a "short and clear" manner, and their being so "plainly and perspicuously penned as every" body "may

* Coke, 3 Inst., 41; and compare 4 Inst., 26.

understand the same,"* stopped too; and the ever since gradually increasing system began,—the natural result of the Statutes and Statute-makers being no longer under constant watch,—of Statutes being "cunningly and darkly penned," so as to help the purposes of centralization by entangling common sense and entrapping the unwary.†

Magna Charta was itself, on every confirmation, ordered to be sent down to the Sheriffs of shires, and all other like officers, to be by them openly read and published to the people.‡ And the writs of the Crown are still extant which were issued in the 2nd Henry III. to the various Sheriffs, &c., ordering them to "cause it to be read, in the full Shire-mote; the Barons, Knights, and all the Freeholders having been thereunto summoned."§

And another curious illustration is incidentally afforded of the representative character of the Lords, by some of the extant writs, which require them to publish the Statutes to their homagers, in their own courts, as, and when, the Sheriffs did in their Shire-motes.‖ No man, whether villein or other, is allowed by the Common Law to be without fullest means of knowing all the laws that he is bound by. In every place where most men congregate is every law to be proclaimed.

Even more frequent and minute proclamation was frequently insisted on. Thus it was ordered that, "to the intent that no man shall excuse himself by ignorance, every Sheriff of England shall be bound from henceforth, in proper person, to make proclamation of the Statute of Win-

* Coke, 4 Inst., p. 42.

† See and compare Coke, 3 Inst., 41; Whitelocke on the King's Writ, vol. i., p. 409; and Twysden, p. 164.

‡ See "Government by Commissions," p. 74, &c., and p. 84, &c.

§ Close Rolls, 2 Henry III., mem. 11. This and the writ next quoted I cite from copies given in the Appendix to Petyt's "Right of the Commons," (1680,) pp. 136 & 166. The Collections published by the Record Commission are very incomplete.

‖ See before, ch. iv., p. 84; Patent Rolls, 37 & 38 Henry III., mem. 4, No. 21; and Matthew Paris, p. 779; the very striking words of which last must be cited:—"Acclamatum est in comitatibus, et annunciatum est in Synodis, in Ecclesiis, *et ubicunque locorum homines convenerant.*"

chester* four times every year, in every hundred of his bailiwick, and by his bailiffs in every market town."†

It is the existence of this wholesome system which explains what has puzzled many, and led them to conceive that laws were so often repeated because they were ill-observed. The true reason was, that our fathers loved not forms and shams, but insisted on realities. Each King was compelled, as has been seen, to swear to the Laws, and to Magna Charta specifically: and the renewed oath was proclaimed afresh, in every reign, in the Shire-motes and other Folk-motes; that no man might be ignorant of the laws which concerned him, and which only exist by the assent and consent of "those using them."

The form of the writ issued to the Sheriffs, to cause proclamation to be made, is itself interesting. Many examples of it are extant. The following will serve as one illustration:—

"The King to the Sheriff of Lincoln greeting. A certain Statute by us, with the assent of the Prelates, Nobles, and Commonalty of our Realm of England in our last Parliament holden at Westminster for the Common Profit of our said Realm, made, We send to you, inclosed in these Presents: commanding and firmly enjoining, that, immediately on sight of these Presents and the Statute aforesaid, the same Statute in your full Shire-mote, AND in the Cities, Boroughs, Market-towns, and other places in your Bailiwick where you may see it most expedient, you do cause to be read and proclaimed, and, as far as in you lieth, to be firmly kept."‡

But such proclamations by the Sheriffs were not confined to Statutes. On every occasion when any proceedings of the Parliament were to be publicly announced, this, and not a mere unseen newspaper advertisement, was the medium. Thus, in the 13th Edward III., the Sheriffs were ordered to proclaim, in Shire-mote, the places to which those must repair who had

* 13 Edward I.

† 7 Richard II., folio ed. of Statutes, vol. ii., p. 33; and see ib., vol. i., p. 96, *Note.*

‡ 8 Richard II., folio ed. of Statutes, p. 37.

received charters of pardon.* Many other illustrations might be quoted.

VII. The attendance of the Judges in Parliament.

It is the clear duty of those who would presume either to take steps for the maintenance of the law, or for the redress of grievances against, or defects in, the law, to make the precise position of the law relating to the subject matter touched on thoroughly understood by themselves in the first place. This our fathers took care to secure by making it a special part of the duty of the Judges,—those who, by constant presence in the Courts where the Common Law is declared and administered by the folk and people, are most likely to be able to afford ready and reliable information,—to attend in every Parliament.

"In the middest thereof [of the House of Lords]," says Sir Thomas Smith, "upon Woolsackes, sitteth the Judges of the Realme, the Master of the Roules, and the Secretaries of Estate. But these that sit on the Woolsackes have no voyce in the House, but onely sit there to answere their knowledge in the Law."†

And so, in the ancient document entitled "Modus tenendi Parliamentum,"—a document of unquestionable authority, though, in some respects, of less remote antiquity than some have assigned to it,—it is said, of those "who, by virtue of their offices, ought to come, and *are bound to be present during the whole Parliament*, without summons,"—that these are, among others, "the Barons of the Exchequer, the Justices, all Clerks and Knights of the King, together with the King's Serjeants at Pleas."‡

* Rolls of Parliament, 13 Edward III., No. 15.

† Smith's Commonwealth, Book II., ch. iii.

‡ See also "The ancient and present Manner of holding Parliaments in England." By Henry Elsynge. Some time Clerk to the Honorable House of Commons. 1663, p. 18. This is a work of great authority. But illustrations of this important point might be indefinitely multiplied.

The empty form is still sometimes gone through of one or two Judges attending at the opening, proroguing, and dissolving of Parliament. This sufficiently indicates the duty which the Law requires,—and, by this very exception, its habitual neglect.

VIII. The answering of every Petition during the same sitting of Parliament.

"Every persone, high and lowe, suyng to this High Court of Parlement, of right must be herd, and his desire and Petition understande [understood]."*

Of all the Safeguards which the Common Law requires, there is not one more important than this; or which is, alone, more calculated to keep Parliament and the Crown within the proper limits of their respective functions, and to render impossible the neglect of their duties. When an answer has to be given, the complaint must be "redde and herd," and the subject must be looked into. It cannot be quietly shelved till forgotten, as is the modern practice. And Parliament would, it is very clear, be rather more careful of passing random Acts, and rushing headlong into a heedless and intermeddling system of law-making, if it had to give to every Petitioner a specific answer on every grievance that grew out of its ill-advised crude legislation. Jobbing would be prevented, for it would be immediately exposed; and the exposure could not be smothered by the Petition being ordered "to lie upon the table." The wrong-doings of functionaries could not be concealed nor speciously varnished over by official "explanations." A specific answer must be given to every specific grievance.

"Petitions," says Coke, "being timely preferred, though very many, have been answered, by the Law and custom of Parliament, before the end of Parliament."†

"The Parliament ought not to separate so long as any Petition remains undiscussed; or, at least, to which the

* Rolls of Parliament, 39 Henry VI., No. 10.
† 4 Inst., 11.

answer is not determined on; and if the King permit the contrary he is *perjured.*"*

And in the 2nd Richard II. it was expressly recorded on the Statute Roll, as the Law, that petitions to Parliament, both then and in time to come, should be answered before the breaking up of Parliament;†—the attempt to evade this requirement of the Common Law having led the Commons very properly to demand that such a Statute should be recorded, "to endure for all time to come."

Without entering at greater length on these several Safeguards, it must be clear to every one how immediately the insisting upon them would affect the practical working of the Representative system. No room would be left for the just dissatisfaction which now increasingly exists as to the mode in which the business of Parliament is—not *done* but—*got through.* That accumulation of labour on Members of the Legislature would be prevented which has grown upon them through the usurped intermeddling with multitudinous affairs to which their functions do not extend. The attention of Parliament would be compelled to be given to the grievances, within their true functions, which do exist; and the latter would not be let lie secretly smouldering, to produce mischiefs of which no man can see the end. In short, Statute Law would be maintained in harmony with Common Law, and the Representers and the Represented would stand continually in those mutual relations the maintenance of which can alone lead to the well-being of the State, and can alone fulfil the requirements of that fundamental principle which proclaims that the Laws and Customs of England are only such inasmuch as they have the assent and consent of those using them.

* *Modus tenendi Parliamentum.* And see, for the sake of illustration, Rolls of Parliament, 18 Edward III., No. 12; 25 Edward III., No. 12; 45 Edward III., No. 16.

† Rolls of Parliament, 2 Rich. II., No. 28.

CHAPTER IX.

MODERN LAW-MAKING.

HAVING considered the characters and qualities of Common Law and of Statute Law, and the Constitutional Safeguards by which these two may be maintained in harmony, it will be useful shortly to glance at the course of modern Law-making, since those Constitutional Safeguards have been unheeded. It will touch nearly the argument which maintains the supremacy of Fundamental Principles, and of the Common Law of England, to see what has followed from neglect of these Safeguards and habitual encroachment on that Common Law. Have the results been good and satisfactory or the reverse?

The importance of permanence in the Laws and Institutions of any country has been already dwelt on. It is a matter, however, which does not meet with sufficient thought. Many think they show their liberality by hailing every proposed change, if made under the name of "Reform." Led away by a temper which is, in truth, the child of mere slothfulness, into the path of new experiment, instead of devoting themselves to the unquestionably more effort-needing work of the adaptation of existing Institutions and Laws to whatever the changed conditions of the times may truly need, they thus prove themselves the greatest enemies to that *progress* which cannot always be *beginning anew*, but which, to be real, must be *going on* upon secure and well-established foundations. It is not sufficiently thought of, indeed generally not thought of at all, that even the commonest rights of property, and therefore of personal action and energy, depend upon the guarantees of

established and positive law; that the fact and nature of the possession and control enjoyed by every one over that which he calls his own,—that is, that by means of which he has the opportunity of the free scope for fruitful self-energy,—is entirely dependent on, and subject to, the law of the land. If the political quack and experimenter is dangerous to the permanence of national union, the legislative quack and experimenter is fatal to individual security, property, and development of thought and energy.*

Liberty assuredly does not consist in giving to any set of men the power to try all sorts of capricious experiments with the persons and properties of the people, under the guise of legislation, whatever be the pretexts. Uniformity and stability in the laws by which any community is regulated form the very basis of the well-being and safety of society. Even imperfect laws, if certain and invariable, are better than a code which, professing to seek after perfection, is perpetually shifting. Ignorance of the law is not admitted as any defence in an English Court of Justice. But such ignorance is a matter not voluntary, but of absolute necessity, when the Statute Book is being year after year overlaid by fresh enactments, repealing, altering, and re-enacting old laws or parts of laws, and adding new ones of every varied character. The numberless incongruities and positive inconsistencies which exist, and are being daily added to, go far to neutralize the objects for which alone Law can have a being.

"The greatest questions," justly says Coke, "arise, not upon any of the rules of the Common Law, but sometimes upon conveyances and instruments made by men unlearned; many times upon wills intricately, absurdly, and repugnantly set down by parsons, scriveners, and such other skill-less men; and oftentimes upon Acts of Parliament, overladen with provisoes and additions, and many times on a sudden penned or concocted by men of none or very little judgment in law."†

* See "Government by Commissions," pp. 35, 106, 162.

† Preface to 2 Reports.

Nothing, he elsewhere says, is more "dangerous than the perpetual patching and amending of Laws."*

It has been already remarked that Laws, to command respect and be wholesome, should illustrate general principles; they should be an adaptation and expansion of known and tried Institutions, and not be ever seeking after novelty. Men will thus be led on, by the paths they are accustomed to, to that which is good and better; instead of having it forced harshly upon their minds that problematical results are being speculated upon by means the beginning of which is marked by a departure from what is tried and practical. But the growth of Centralization has entirely altered the old course of legislation; has thrown aside, continually more and more, the Constitutional Safeguards by which alone the harmony of Common Law and Statute Law can be maintained. The great object would seem to be, not to maintain good laws in wholesome activity, but to cram on to the Statute Book as many crude speculations and theoretical expedients as possible.† Over-legislation has become the besetting sin of Parliament. It is begotten of the attempt, in the true spirit of Centralization, to enforce foregone dictation for every contingency of human affairs, instead of keeping in vigorous activity those Institutions by which men will always be ready to manage well their own affairs as the exigency arises.

In the preamble to the laws promulgated by King Alfred, by authority of his Witena-gemote, it is said:—"I dare not be so bold as set down for law aught much of my own; for that it is unknown to me what of it would be liked by those who shall live after us." This is the true spirit of the Law-maker of a free country, and the result of his law-making. Exactly the reverse are the spirit and result of the law-making of our day.

As to every measure that can be brought forward, there are always two points which ought to be considered. *First:* the object itself—good or bad; *second:* the mode in which it is

* Preface to 4 Reports.

† See the last Chapter; the VIth Constitutional Safeguard.

proposed to carry that object out—good or bad. But, in the hurrying scramble of modern law-making, a momentary attention is perhaps (though even that but rarely) given to the former; it is scarcely ever that the latter engages even a passing thought. As to both, it is the bidding of a minister, or the gratification of some clique, that is the sole consideration. The results can only be what we find the Statute Book,—a monster shapeless, huge, and vast; profitable indeed to the lawyers, an entanglement only to the public.

Lord Coke well expresses what should be the preliminary steps to every proposition for new law-making. Among the rest are, that the artist in law-making should set himself "to know the several kinds of the municipal Laws of his own proper nation; for the innovation or change of some laws is most dangerous, and there is less peril in the alteration of others:—to understand what the true sense and sentence of the Laws now standing is, and how far forth former Laws have made provision in the case that falleth into question:—by experience [careful search] to apprehend what have been the causes of the danger or hindrance that hath fallen out in that particular to the commonwealth, either in respect of time, place, person, or otherwise:—to foresee that a proportional remedy be applied, so as that, *for curing of some defects past, there be not a stirring of more dangerous effects in the future.*"*

The Constitutional Safeguards, already enumerated, secured the continual practical observance of these rules. Under the neglect of those Safeguards each one of these wholesome rules remains unheeded. Neither are "laws so plainly and perspicuously penned as every Member of both Houses may understand the same,"† nor are the limits to which the legislative functions can alone lawfully go considered or heeded. One of the characteristics of modern law-making is the peddling detail into which it enters, and by which it seeks to bind and tie men up, by pedantic foregone conclusions, from free action and responsibility. This is a style of legislation which pro-

* Preface, 4 Reports. † 4 Inst., 42.

duces multiplied evils. Its very character of detail is self-defeating. It is a sound maxim of Logic, and also of the Common Law of England, that the enumeration of certain things implies the exclusion of those not enumerated. No man can foresee all the circumstances which may arise, nor all the resulting conditions of those which exist. The more *detail* is attempted, the more are men drawn off from the habit of having recourse, always, to broad principles, while cases will ever be continually occurring to which no pre-ordained specialty of detail will apply. But again, such is the over-loading of the Statute Book which has grown out of this system, that men turn in despair from any attempt to know its contents; and, instead of there being laws, few and plain, but certain and constant, there is a confused mass, endless, intricate, involved, contradictory, and ever changing, and, consequently, full of uncertainty and doubt. The Statute Book seems, indeed, rather a cunning device to entrap the unwary than a clear light to help along the wary.*

Both the *character* of the Statutes now habitually manufactured and the *mode* in which they are manufactured (this word is the only proper one to use) are deserving of very serious consideration. In both respects the relations and functions of institutions of Local Self-Government are wholly lost sight of, and no one of the Constitutional Safeguards is observed. The responsibility of Parliament is not secured by frequent re-elections; the Representatives are not, practically, the Representatives of true and active institutions of Local Self-Government; the attendance of Members is not given; the Represented are not consulted and advised with as to the measures brought forward; the result is not reported

* "What is more wonderful and inexplicable to a man who thinks on it, than that, after many hundred years of the same government, and this government called a good one, a wise one, an example to others, some new statute should be deemed requisite every six months." *Landor's Imag. Conv.*, vol. 2, (second series,) Penn and Peterbrough. Unhappily it is not one, but one hundred at the least, of now (so-called) Statutes that are added now to the Statute Book every six months!

back to them; the Statutes passed are not published on the spot in the various institutions of Local Self-Government, and in all the places where men most congregate; the state of the Law is not ascertained by inquiry from the Judges, or in any other way; nor are Petitions to Parliament taken heed of and replied to.

The character of modern Law-making is emphatically empirical: that is, the (so-called) Laws are hurriedly devised in reference to incidental specialties, instead of being the careful results of a search after the fundamental Principle to which each specialty belongs; and by the development of which principle, in respect to that specialty, a true and genuine result may be wrought out. It is, undoubtedly, at all times much less trouble to apply an empirical remedy than to examine carefully into principles, and ascertain how those which have been long determined, and been in tried operation, may be applied to, and may be made to bear upon, individual cases. The history of science and of medicine, as well as that of law, affords but a long illustration of the tendency to this course, requiring a constant powerful impulse to prevent it.

This point has been elsewhere* so fully dwelt on that it is needless to enlarge on it here. But there is one form which modern Law-making takes which needs remark. It is a form at once probably the most burthensome of any to Members of Parliament, and one of the most pernicious in itself; while it is a wholly illegitimate field of Parliamentary labour. It is the system of *Local Acts*.

Under the name of Local Acts come several groups. There are Railway Acts, and others authorizing public works. If these extend beyond the limits of any one Institution of Local Self-Government, and therefore beyond the sphere of the single Local legislation of a borough or a shire, it is undoubtedly proper that, *after* they have been laid before the Institutions of Local Self-Government whose localities they affect (but not before) they be submitted to Parliament to

* See, specially, "Government by Commissions," pp. 99—103.

adjust any differences which may have arisen between different interests.*

But, besides these, there are a mass of Local Acts which never ought to come near Parliament at all. All Borough Acts, and others of that class, come under this head. The effect of the present system is, simply, to enable a few projectors to smuggle an Act through Parliament, practically unknown to the mass of the inhabitants, and without any real means being afforded to any among them either to discuss the merits of the proposal, or to protect any rights or properties which belong to them as individuals. Even if the fact of an application for a Local Act is known, the proposed details are not, in any case, known and understood by those whose interests they so nearly affect. At the same time, no real power of protest or appeal exists;—the means of doing either before a Parliamentary Committee being so costly that the pretended opportunity amounts to a mere cruel mockery.

But, in addition to this, the system of these Local Acts is but one form of Centralization. Every Local Act, as framed in modern times, amounts to a tying up the hands of Institutions of Local Self-Government. The object of the latter is the having full legislative power in the hands of those concerned;—so as to be able to regulate all contingencies as they arise. But, under modern Local Acts, Town Councils and Local Boards become little better than mere executive machines. All power of *adaptation* is taken away, which is the first element of Local Self-Government; while the evil of foregone dogmatic arbitrary dictation is lain under without any power of remedy, except by again going to crave the aid of that same illegitimate authority the first appeal to which was the beginning of the mischief.

In every point of view the whole modern system of Local Acts is unlawful, unconstitutional, and a breach of every fundamental principle which affords "a law and rule to make Acts by."† Such Laws are not made with the assent and

* "Government by Commissions," p. 371.

† See quotation in "Government by Commissions," p. 43.

consent of those using them. No opportunity is afforded for consideration and discussion.

The modern course of Parliament in respect to such Acts has grown up through an invasion, by Parliament, of what are, in reality, as already proved, the true functions of the Crown; the invasion of whose true functions,—especially by a body which has certain unquestionable legislative powers belonging to it, and may thus the more easily gradually stretch these, unperceived,—may be as dangerous and mischievous as any encroachment by the Crown itself beyond the limits of its own true functions.

It has already been explained what a Charter of the Crown is, in reference to any place, and how alone it can be valid. Springing from the folk and people, and open at any time to annulment on proof of the alleged origin not being genuine, the authority of the Crown is invoked merely to complete the solemnity of the Act, and give it a recorded place. The applications for matters of this nature were very often made in Parliament, for the reason already named;* and the Ministerial act of the Crown was frequently, in consequence, recorded on the Rolls of Parliament. But this can give no jurisdiction to Parliament in the matter. And the assumption of such jurisdiction is of most dangerous and widely-spread mischievous consequence.

Under cover of these Local Acts, infringements are made upon the Constitutional rights and liberties of freemen which are truly astounding,—and that, without any possibility of redress. Wide powers of summary jurisdiction are often given, in direct opposition to the spirit and principles of the Common Law. Without the slightest knowledge, among those affected, of such unlawful powers having been asked or given, a man in the pursuit of his lawful calling, or in the course of needful self-protection, finds the all-essential rights which he enjoys at Common Law, and which no charter of the Crown can invade, nor even his own self-consent take away,† cut from under him by some hidden section of a Local Act of

* Before, p. 99. † See before, p. 114.

Parliament he never heard of, or, if he did, which he never dreamt could thus concern him.

Lord Coke was obliged, in his day, before the modern system of Local Acts had grown up, to enter "a caveat to pass few or no private bills between subject and subject; but to refer them either to the Courts of Equity or of Law, where the cause may be duly examined, and, upon deliberation, discerned and adjudged."* This caveat is much more strongly needed as regards modern Local Acts. And it must never be forgotten that the evils that have been touched on are only the smallest part of the actually resulting evils. For these cases, as for those of bills between subject and subject, there exist the proper tribunals, to which the matter should be referred, to "be duly examined," and by which, "upon deliberation," they should be "discerned and adjudged;"—namely, the Institutions of Local Self-Government themselves. There can be few heavier blows at the spirit of self-respect, and at the sense of right and responsibility, than are given by this usurped system of taking the consideration and determination of matters so nearly and solely concerning them out of the hands of those thus concerned. It is Centralization in every sense of the term. The power of self-adjustment, of self-adaptation,—that all-important power inherently belonging to every Institution of Local Self-Government,—is usurped upon; and the very admission of the authority of the usurped Act implies the relinquishment of the most precious rights and responsibilities of Local Self-Government, and puts those who have submitted to it in bondage to going again to the usurper whenever any alteration or adaptation shall be needed. For it is not the short declaration of broad principles that modern Local Acts ever embody, but an endless multiplicity of complicated details,—and, for the most part, not "plainly and clearly," but "cunningly and darkly, penned."†

Where Parliament has already unjustifiably interfered, and caused a violation of the inherent rights and liberties of any

* The Prince's Case, 8 Reports, 22 *(a)*.

† 4 Inst., 42.

Institution of Local Self-Government, it may be well,—until the public mind is prepared to demand a general Declaratory Bill of Rights, founded upon the Common Law guarantees of Institutions of Local Self-Government,—to obtain simple Acts, where it can be done, repealing all the unlawful interference, and declaring anew the Constitutional basis.*

* The following is an example of the simple mode in which this may be done. It was prepared by the author, and approved by successive Ward-Motes of the Ward of Farringdon-Without in the course of 1850. It will be seen to embody a few simple *principles* only, equally applicable to every town and borough and shire in England; and affords an illustration of the practical working of Institutions of Local Self-Government.—

"DRAFT OF A BILL

"*For abolishing the Payment of Fines and Stamp Duties on the Admission of Freemen of the City of London, and for making and keeping a Roll of the Citizens of the said City.*

"*Whereas* by the ancient Common Law of England every man who has been an occupier within any city or borough for the space of a year and a day becomes thereby a free man, entitled to the exercise and enjoyment of all the rights and liberties, and liable to the discharge of all the duties and obligations, of a citizen and free man within such city or borough: *And Whereas*, in restraint of the said good and wholesome Law, certain fines have for some time past been imposed and levied within the City of London before any man is permitted to exercise and enjoy several of the rights of a citizen and free man within the said city; and certain stamp-duties have also been in the habit of being claimed to be paid into Her Majesty's Exchequer at the time of payment of such fines: By reason whereof the number of those having the full exercise and enjoyment of all the rights and liberties, and liable to the discharge of all the duties and obligations, of citizens and free men within the said city, has been greatly lessened, and is now yearly lessening, and the administration of the affairs of the said city is less well and satisfactorily discharged than it otherwise would be. *Be it therefore declared and enacted* by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that from henceforth no fines, stamp-duties, or other money payments, of any nature or kind soever, shall be leviable or

So much for the *character* of modern Law-making. But a review of the *mode* in which modern Law-making is allowed to go on is as little satisfactory as is the review of the

payable or levied or paid upon or by any person or persons whomsoever, in order, or previously, to the exercise and enjoyment by him or them of all or any the rights and liberties, and the liability to the discharge by him or them of all or any the duties and obligations, of a citizen and free man within the said city; and that all Statutes, Acts, Ordinances, By-Laws, Rules and Regulations whatsoever, under or by virtue of which such fines, stamp-duties, or other payments are, or are claimed to be, so made payable, shall be, and the same are hereby, repealed so far as the same or any of them relate or relates to such fine, stamp-duty, or other payment.

"*And Be it declared and enacted* that every man who shall have already occupied, or who hereafter shall occupy, on his own behalf, either separately or jointly, and either by way of residence or for the purpose of carrying on there his own proper lawful business, calling, or profession (and not merely as the servant, or in the pay, of another person), any house, part of a house, chambers, or other premises within the City of London, for the space of a year and a day, and who shall not at any time during the said space of time have been or be in the receipt of alms, is, and shall thereby become, and remain during the continuance of such occupancy, a citizen and free man and member of the Body Corporate of the said city, entitled to the exercise and enjoyment of all the rights and liberties, and liable to the discharge of all the duties and obligations, of a citizen and free man of the said city: And every such citizen and free man shall be entitled to vote at every and any election for Alderman, Common Councilmen, and all and any other functionaries and officers whose election is usually made in Wardmote.

"*And Be it declared and enacted* that a Roll of the said citizens and free men shall be made and kept by the Alderman of each Ward of the said City; in which Roll shall be entered the name, surname, and place of occupancy of each and every person so from time to time occupying as aforesaid within such Ward: and a printed copy of such Roll shall be affixed outside the outer door of the church or several churches which shall be the parish-church or churches within each Ward, for *one* whole week previously to the holding of each of the quarterly Wardmotes hereafter named: and notice or statement of any error or omission in the said Roll may be given to the Ward Clerk in any Ward by any occupier within such Ward twenty-four hours at the least before the time of holding of any of the said Wardmotes; and all

character of that Law-making itself. Like the latter, it is in direct violation of all the Constitutional Safeguards. "Mischievous Acts" are brought in "with flattering preambles."* The stealthy legalization of individual speculations, interested devices, and arbitrary encroachments on the rights and liberties of the people, is gotten, by the clear violation of every principle on which a Representative Assembly can, under any circumstances, exist. Bills are brought in; hurried rapidly through, without time for consideration, or for their very existence to be known; passed in packed Houses, and by contemptible minorities of the whole assembly.† They are wrapped up in a multiplicity of tedious verbiage whose very aspect disgusts and repels the plain-dealing honest man. All means, in short, are resorted to, to prevent it being known by the country what is being done, and to prevent Members of

the errors and omissions alleged in such notices and statements shall, if substantiated on the oath or affirmation of sufficient person or persons before the full Wardmote, be then and there, in full Wardmote aforesaid, amended and made good. And Wardmotes shall, for the above together with such other purposes as shall seem good to the occupiers within each Ward, be held within each Ward, by the Alderman of each Ward, or his Deputy, four times at the least in each year, namely, on the first Monday in the respective months of March, June, September, and December; and the said Roll, so amended and made good, shall be then and there, in full Wardmote aforesaid, signed by the Alderman of such Ward, or, in his absence, by his Deputy for the time being; and every such Roll, so at the last preceding Wardmote amended and made good, and so signed as aforesaid, shall be sufficient evidence of the title of any person named in it to the exercise and enjoyment of all or any of the rights and liberties of a citizen and free man within the said city, and of his liability to the discharge of all and any of the duties and obligations of a citizen and free man within the said city. And the said Roll shall be lodged in the hands of the Ward Clerk of each Ward, who shall give access thereto to any person demanding to see the same at all reasonable times in the day-time, and shall furnish a copy thereof to any person requiring the same upon payment of a sum not exceeding sixpence for every two hundred and fifty names in the said Roll."

* Coke, 4 Inst., 39.

† See, hereon, "Government by Commissions," p. 94, &c.

Parliament themselves knowing, or understanding if they know, that which they are made the mere machines for foisting on to the Statute Book. Law-making has become but a race of smuggling; and that, of a kind having none of the redeeming traits which other contraband ventures have.

These remarks apply to all the classes of measures, general and local, now passed through Parliament, and also to all money votes. The absence of the Constitutional Safeguards affects the whole business of Parliament. If, "in times past, the Houses of Parliament have not been clearly dealt withal, but by cunning artifice of words utterly deceived,"* those Houses were, at any rate, in those times, one with the people; and the moment the mischief was found out, the remedy was applied.† Unhappily the case has altered. It is with willingness now, and under the notion of saving trouble to themselves, that the members of both Houses suffer themselves to be deceived "by cunning artifice of words." And the people suffer. But the remedy is in their own hands. They may yet assert, and fall back upon, the Common Law. If Parliament is waited on to find and apply the remedy for its own usurped action, that remedy will never come.

This is the proper place to notice an evil in Law-making which has often happened. It consists in embodying, as of new, that which is really the old established Common Law. The effect is threefold:—*First;* doubt and uncertainty are introduced as to the actual extent and bearing of the Common Law, inasmuch as the letter of the statute, and not the spirit and principle of the Common Law, is apt to be taken as a guide:—*Second;* it creates wholly erroneous notions as to the origin of the rights and liberties of freemen, ascribing them to a source and a time to which they do not belong, but which, on the contrary, have been but made the means of fettering and hampering that which is, in truth, a most remote

* Coke, 4 Inst., 42.

† See an instance of some Acts, got by a job, repealed, on that express ground, 21 Richard II., folio Statutes, p. 102; and, yet again, the Parliament Rolls of 1 Henry IV. Several similar instances might be cited.

inheritance:—*Third;* it gives the opportunity with the greater ease, when a convenient season comes, to undermine or repeal that which is thus treated as having a statutory, and so a derived, existence only, instead of as being, as it really is, an inherent original birthright. Many examples of this might be cited. It will be sufficient to name the *Habeas Corpus* Act. People speak of that Act as a bulwark, unaware that the writ of Habeas Corpus is a Common Law right, of remotest practice.* Having been put into the harness of a Statute, it is able, whenever it suits the purpose of a dishonest government, (for it never can be sought by a truly honest one) to be suspended. The Common Law writ would not be so easily able to be suspended; nor would its suspension be ventured to be asked.

The true mode for Statute Law to deal with Common Law is in the *Declaratory* form. Declaratory Statutes are often highly valuable. Over and over again have they been had recourse to in times gone by. It has been shown that the Petition of Right was itself a Declaratory Statute. The distinction cannot be too clearly understood and felt between Statutes which are thus *Declaratory* and those which are *Experimental.* Those Patriots and earnest men to whom we owe, through so many trials, the maintenance, century after century, of our liberties, had one weapon which they always used: that weapon was,—DECLARATORY STATUTES. They dealt with Principles, and not with those details which, under Institutions of Local Self-Government, it belongs to those concerned in each separate Institution to fill up. They knew and felt that Statutes are valuable chiefly for the ideas they publish, and not for the detailed machinery they may dictate. They knew that the best way to teach the people to use well their liberties was for them to know what their rights and responsibilities really are, and to have full and frequent practical opportunity and call for their free exercise.† They had those

* See, for an interesting illustration, 1 Rushworth, p. 509.

† "Teach people to rule themselves," admirably says Landor, "and they will neither bear violence nor inflict it." *Imag. Conv.* vol. 2, (second series.) Penn and Peterbrough.

rights and liberties, therefore, again and again declared in Parliament; ordered to be read in churches, and to be published in the Shire-mote and at the Market Cross; and, whenever any violation of any of those rights and liberties was threatened, it was but the signal for again insisting on the practical recognition of the old Constitutional Safeguards, and for requiring another solemn re-declaration of the rights and liberties which they and their fathers had inherited, and which they felt it their highest duty and responsibility to hand down, unshorn, to us.

CHAPTER X.

DELEGATED LEGISLATION.

ALLUSION has been already made to the mode in which the influence of the Crown is unlawfully sought to be extended, by the device of assuming to delegate to others, appointed by it, certain functions which do not in fact belong to the Crown itself.*

But a Representative body will have a tendency, though not from the same motives, to pursue a course not unlike this, unless the Constitutional Safeguards already stated be kept in constant use. It will think to save itself trouble, and oftentimes to cut a hard Gordian knot, by delegating to others that legislative power which has been intrusted to itself.

It is the natural object of every Government having despotic ends, and seeking to narrow the liberties of the people, to encourage the disposition thus to delegate legislative authority. By this means the ends of Centralization are more effectively accomplished than by any other that ingenuity can devise. While the outward show of representative institutions is preserved, an arbitrary and wholly irresponsible power is, in reality, lodged in the hands of a few.

AND the same end is helped when any of these depositaries of delegated power are made to put forth statements and "Reports" on special matters, by which to influence the legislature and the public, and to bias them,† through the authoritative mode of utterance, into the reception of exparte and craftily framed statements, whose object is, ever, the

* Chapter v., p. 108.

† See "Government by Commissions," p. 176.—"How to coerce opinion by authority."

grasping hold of yet further irresponsible and arbitrary powers; the smothering of all the mischiefs which have befallen from its exercise; and the hindering of discussion and true inquiry, and so the formation of sound judgments, and the adoption, thence, of healthy action.

Nothing can be more mischievous than such a system; and nothing can be a more clear violation of the Common Law of England. This, however, is the one ceaseless effort of those who, in modern times, of whatever party, have gotten to themselves the reins of power. Experimental legislation, and the enforced legalization of individual speculations, find, in such a system, the most convenient means of crushing alike opposition and opportunity of discussion.

To give illustrations of this system would fill a volume. But it is important that distinct ideas should be had on the fact of the extent and increasing tendency, in England, to the attempted erection of delegated legislative power.

It is well known that by the Statutes which profess to authorize the Excise and Customs systems, not only are most arbitrary powers directly given, powers which are altogether at variance with the Common Law and in violation of the simplest rights and liberties of free men, but authority is also pretended to be given to make all kinds of rules and regulations with respect to an infinite variety of matters; and this, without the slightest regard to the assent or consent of those using them.

To the Poor Law Board, one of the great schemes of (for a time) accomplished Centralization in England, and whose demoralizing influences cannot be exaggerated, similar powers, to the most arbitrary extent, are pretended to be given. To specify the consequences would be to detail the history of an organized oppression the most capricious, the most offensive both in form and substance, the most vexatious, and the most obstructive and demoralizing, that, as a single example, the history of any nation can show. It would seem as if the object were to demonstrate to the world how entirely the forms of Representative Institutions may co-exist with the

reality of arbitrary and irresponsible despotism, and with the crushing of everything like the spirit of independence and the wholesome efforts of responsible activity.

The Local Acts Preliminary Inquiries Acts* are another illustration of the attempt, under the "cunning artifice of deceiving words," to induce Parliament to relinquish independence of inquiry and judgment, and to adopt the mere dictated legislation of the irresponsible nominees of the Crown. In that case, however, the deceitful nature of the pretences was speedily found out, touching as the consequences did the convenience of members themselves.

The so-called Public Health Act has carried this system of abrogating responsible legislative authority farther than any preceding measure. There is no country in Europe in which a more despotic measure, probably none in which so despotic a one, was ever dared to be put forth under the name of law. It is a measure which reflects equal dishonour on the Ministers who proposed it, the Parliament which passed it, and the People which was so lost to self-respect and moral independence as to allow it to be passed. This Act pretends,—among many other direct violations of the fundamental laws of the land,—to empower a Crown-appointed and irresponsible Board to issue, for any place in England or Wales, "such provisions, regulations, conditions, and restrictions, with respect to the application and execution of this Act, or any part thereof, and with respect to any Local Act, and the repeal, alteration, extension, or future execution of the same, and in all respects whatsoever, as they may think necessary!!" It would indeed be difficult to go further than this in abrogating the functions of a Representative Body and all the characteristics of free Institutions.

Lord Coke remarks of the Commissioners of Sewers, who,—as all such bodies will do,—were apt to attempt the exceeding of the powers really intrusted to them, that "this is certain, that neither the Commissioners of Sewers, nor any other, have such absolute authority but that their proceedings

* 9 & 10 Vict., c. 106; and 11 & 12 Vict., c. 129.

are bound by law."* It is not so with modern Commissioners and Crown-appointed Boards. The very object of their creation and existence is to over-ride the law; to make, for themselves, what laws they please, and to alter the latter as suits their own convenience, irrespective alike of Parliament and of the people affected.

It must be understood that, beside the few cases above enumerated, there are, contained in every one of the pretended Acts of Parliament (for it must ever be remembered that all these are constitutionally unlawful) creating Crown-appointed Boards and Commissions, clauses which directly supersede the functions of Parliament in matters of very great importance; while the Privy Council also has, of late years, usurped to itself, on many matters, the functions of Parliament, besides having had others professed to be given to it by divers Acts of Parliament. There now exist in this country many Courts quite as illegal and arbitrary and mischievous as ever were the Courts of Star Chamber and of High Commission. Parliament is reduced to be little more than the registrar of the decrees of an irresponsible executive, the convenient instrument for effecting purposes of centralization. Its proper functions, no less than those of Institutions of Local Self-Government, are gotten to be discharged, not by the Common Counsel of the whole realm, *elected* by the Nation, but by a few, belonging to special cliques, and *selected* by the Ministers of the Crown. Thus are absolute and irresponsible powers, which can exist in no persons nor in any Body according to the Constitution, procured to be vested in Crown-dependent functionaries, who assume to exercise, and do exercise in the most capricious, arbitrary, and offensive way, a "jurisdiction, power, and authority" which it has been again and again declared by the fundamental laws of the land that they "neither have nor ought to have.†"

It remains briefly to show that, by the consent of every

* 4 Inst., 276.

† 16 Car. I., c. 10; and see "Government by Commissions," p. 257, &c.

Constitutional Authority of weight, this system of delegated legislation is unlawful, and a violation of the whole spirit of the Constitution.

The quotation already made from Bracton shows what, in his time, was held to be the only source and sanction which laws, whether national or local, could have.*

Fortescue has already been quoted, where he tells us how alone laws can be made in England, and by what full consent of the whole body of the representatives. He adds that, "if it fortune these Statutes, being devised with such great solemnity and wit, do not fall out so effectually as the intent of the makers did wish, they may be quickly reformed, but not without the assent of the Commons and States of the Realm, by whose authority they were first devised."†

Lord Coke, having already stated that he has "found that in times passed the Houses of Parliament have not been clearly dealt withal, but by cunning artifice of words utterly deceived," goes on to say, a little later:—"When any plausible project is made in Parliament, to draw the Lords and Commons to assent to any Act, (especially in matters of weight and importance) if both Houses do give, upon the matter projected and promised, their consent, it shall be most necessary, *they being trusted for the Commonwealth*, to have the matter projected and promised (which moved the Houses to consent) to be established in the same Act; lest the benefit of the Act be taken, and the matter projected and promised never performed, *and so the Houses of Parliament perform not the trust reposed in them.*"‡

In every one of the classes of cases alluded to in this chapter, these sound maxims of Lord Coke are violated, and so "the trust reposed" in Parliament is not performed. Some "plausible project" is brought forward, which can make use of one of the prevailing sentimentalisms of the day. Men, afraid to exert the moral courage to examine its real merits, assent to it, under pressure of the interested cry of "Reform;" and then it is systematically left to two or three

* See before, p. 27. † De Laudibus, ch. 18. ‡ 4 Inst., 44.

irresponsible persons to work it as they please, instead of its being insisted on that "the matter projected and promised shall be established in the same Act."

The having these matters "established in the same Act," is very different from that system of peddling detailed Law-making already remarked on. The very fact of deputing legislative power gives rise to the greatest multitudinousness, and of the most mischievous and grievous character, in peddling detailed Law-making. The wholesome requirement of "establishing in the same Act," means, the pointing out of the actual relations of the "matter projected and promised" to existing Laws and Institutions, and how, instead of arbitrary new devices being foisted on the public, existing Institutions shall be developed so as to give full and fair trial to the matter projected and promised, in accordance with, and by the healthy exercise of, the rights and responsibilities of freemen.

For "THE HIGH POWER OF A PARLIAMENT TO BE COMMITTED TO A FEW, IS HOLDEN TO BE AGAINST THE DIGNITY OF A PARLIAMENT, AND THAT NO SUCH COMMISSION OUGHT TO BE GRANTED."*

Never, until thus in modern times, has such delegated legislation been dared to be directly or avowedly attempted in England, except once; and that instance is very instructive. In the 21st year of the reign of Richard II., a commission was appointed by Parliament, (the height of a *Crown*-appointed commission for such purpose was not then reached) consisting of some of all ranks,† to "examine, answer, and determine all the Petitions [undetermined by Parliament] and the matters contained in the same,‡ as they shall think best, by their good advice and discretion in this behalf." What was the sequel? A few months only had gone by, and King Richard was a prisoner in Pomfret Castle; a statute had passed repealing that unlawful Commission, under which "divers Statutes, Judgments, Ordinances, and Stablishments

* Coke, 4 Inst., 42.

† 21 Richard II., folio Statutes, p. 107. ‡ See before, p. 140.

were made, ordained, and given, erroneously and dolefully, in great disherison and final destruction and undoing of many honorable Lords and other liege people of the realm."* And not only this, but it was expressly recorded and declared in Parliament, that this Commission "was made in very great derogation of all the estates of the realm; and that no such power should be thenceforth ever granted by such authority of Parliament, nor should this case be ever treated as a precedent in time to come."† There is hardly one of the modern instances of delegated legislative power which does not, really, produce more mischief and wrong, though more widely diffused, than were produced by this earlier, though much less flagrant, attempt of the same kind, which was thus solemnly recorded as unlawful and not to be repeated.

It is clear that the having the deputed power, immediately intrusted, of acting as representatives in concert, can impart no power whatever, to those thus deputed, to hand over to others any part of the thus intrusted legislative functions. Even did checks and safeguards exist against the abuse of their power by those thus secondarily deputed, the deputing cannot but be illegal. Either those directly deputed must themselves discharge the trust committed to them, or, acknowledging their incapacity, they must resign it back again into the hands of those who so intrusted it. The utmost length they can go is, to appoint Committees of their own body to go specially into any particular matter, and to lay the result of their inquiries, or other labours, before the whole body for consideration. And this has been shown to be the "Law and Custom of Parliament."‡ When, in the 42nd Henry III., a Committee of 24 was appointed, that was an Act as Constitutional as the exigency permitted. It was not intended to supersede, nor did it supersede, the Parliament.

A record already quoted of the 51st Edward III., may well be here recalled. It shows strongly the jealousy the Commons

* 1 Henry IV., folio Statutes, p. 112.

† Rolls of Parliament, 1 Henry IV., No. 70.

‡ Smith's Commonwealth, pp. 38, 44, &c.; and Coke, 4 Inst., 11.

justly had, while the Constitutional Safeguards were observed, of the assumption, in any hands, of the power of Law-making without consent of all the realm. They refused to let the Clergy make ordinances which should be binding, "for they did not choose to be bound by any Statutes or Ordinances made without their assent."* Much less would they have chosen to be bound by any Laws, Rules, or Regulations, devised by any Board or Commission of a select number of Crown-appointed persons.

It must be well noted that there are two kinds of these Boards and Commissions: the one simply administrative; the other having (which most of them have) deputed legislative authority, as well as administrative powers. Both are, equally, a violation of the Common Law and of the rights and liberties of freemen. While the latter are so for the reason already stated, the former are obviously so, inasmuch as all administrative functions belong to the Institutions of Local Self-Government.

Both kinds of Boards and Commissions have, within the nineteenth century, proceeded much further, and extended to an infinitely greater variety of subjects, than those unlawful commissions which were long ago declared to have "been found to be an intolerable burthen to the subjects, and the means to introduce an arbitrary power and government."†

Illustrations have been elsewhere given, showing the sense our fathers entertained upon this unlawful and mischievous system of Boards and Commissions.‡ The Petition of Right itself is in entire accordance, both as to spirit and practical reference, with what is declared by Lord Coke, when, having justly said that "new things that have fair pretences are most commonly hurtful to the commonwealth," he puts, as the first and chiefest, "New Courts [Boards and Commissions], for commonly they tend to the grievous vexation and oppres-

* Before, ch. vii., p. 120.

† 16 Car. I., c. 10, repealing the Court of Star Chamber.

‡ "Government by Commissions," pp. 148—155.

sion of the subject, and not to that glorious end that at the first was pretended."*

Under the system of delegated legislation Representati Institutions become a mere delusion. The idea and intentic is, to give to irresponsible Crown-nominated secret Boards those legislative powers which have, through all former ages, been exercised only by Institutions of Local Self-Government, and, as responsible to the latter, by the National Representative Assembly. And those to whom the public ought to look for resistance to this system, as well from a sense of self-respect as of duty and faithful discharge of trust, are content, on every matter of the greatest real and practical bearing and daily interest, to endorse the decrees of Government for the creation of such Boards; and, if the *form* is gone through of submitting the decrees of any of the latter to Parliament for confirmation (as is sometimes the case), to endorse the latter without so much as looking at a single provision of a single one of them. They are content, in short, for the sake of saving themselves a little trouble, to depute legislative power, entire and unquestioned, to the dependents on the Crown!

Every one who has studied, faithfully, history and government, has admitted the evil of any *imperium in imperio*. Institutions of Local Self-Government are not such; for they are constituent parts of what goes to make up the great whole, and the functions of Parliament are, as has been shown, rightly confined to what things concern the common interests of all those institutions, and cannot reach to what things are within the province of the latter individually. But this system of deputed legislation, the child of Centralization, really consists in the erection of a number of *imperia in imperio*. And the resulting Conflict of Laws is perpetually going on in many shapes. The most deplorable of these, in a great sense, is that conflict which every one of these *imperia in imperio* is ever waging with the Common Law. This latter is the law of liberty and of freemen: the former seek to erect the law of arbitrary caprice, fitted only for a state of bondage.

* 2 Inst., 540.

It is not by resorting to any novel schemes, many of which have been oftentimes suggested, that Law-making can be simplified, or go on usefully and healthily. It is only by stemming at once the tide of the whole modern system of Law-making; by putting away every instrument of delegated legislation, as the Courts of Star Chamber and of High Commission were heretofore put away; by remembering that the function of Parliament itself is not the piling up of multitudinous experiments in legislation, but "the maintenance of the Law, and the redress of the grievances which happen;" and by the actual observance of the Constitutional Safeguards. Thus will the labours of Parliament be reduced within a compass which will enable every matter to be well considered; which will relieve members of the enormous burthen which now lies upon them; which will make their own position a far more dignified and influential one than it now is; and which will result in putting forth, when the exigency is found truly to need it, Statutes short, plain, and simple,—so that not only may "the matter projected and promised be established in the same Act," but "every member of both Houses may understand the same,"* and they may also be understood and appreciated by, and receive the intelligent assent of, "those using them."

It is, however, the unquestionable truth, and one most seriously to be thought on, that, under whatever delusive names any of the sections of the great modern Conspiracy against Free Institutions disguise themselves (and these names are Legion), they all have this in common;—that, with words of liberalism and the Rights of Man upon their lips, they each and all seek, practically, to fetter down the energies, actions, voluntary agency, responsibility, and very thoughts of men, within certain lines which a few self-appointed individuals shall dictate. The means they each and all seek, and which they use wherever and whenever either of them obtains, directly or indirectly, the opportunity, are the same. Those means are, making the name and form of Representation the disguise and cover for irresponsible *Delegated Legislation*.

* 4 Inst., 42.

CHAPTER XI.

RIGHT OF PETITION.

THE Constitutional Safeguard to the right and lawful working of Representative Institutions, arising out of the prompt answering of Petitions, has been already noticed. But it is proper, before concluding the department of the present subject connected with the action of Representative Institutions, to touch more specifically upon the matter of Petitioning. It is a subject of very great importance in reference to the machinery of right government, but one, unhappily, very ill understood in its constitutional bearings. Hence the practice has become abused, until, from being a vital reality, it has been made into a mere colourable instrument for the more readily carrying on of the work of Centralization.

To understand the constitutional nature of "Petitions," it will be necessary to recal what have been already shown as the functions of the Crown on the one hand, and of the General Representative Assembly, or Parliament, on the other. The functions of both these, existing only for the purpose of enabling freemen to live the more happily in a state of freedom, the Constitution contemplated, and the practice of it from the earliest times realized, the existence of the utmost facility of communication between any of the original parts of the whole state, and both these two derived authorities. In the one case, any man, or any Institution of Local Self-Government, has the inherent right to demand of the Crown the putting in force of the Law in whatever case needed. In the other, any Institution of Local Self-Government has the inherent right to suggest the adoption of any matter for the general good of the whole nation, which it may claim to have

discussed and considered by the Parliament; just as any individual has the inherent similar right in his own special folk-mote of individual freemen.

And the fundamental idea thus shortly explained, extends, obviously, to the relations between the parts and the Representative Body of any Institution of Local Self-Government.

Folk-motes, under any form of Local Self-Government, can, of course, never have other than the general control,—to be exercised after full opportunities of knowledge and discussion. The carrying out of Instructions, and any matters of detailed administration, must always be committed to individuals. Hence the choice of various administrative and executive officers, responsible to their constituents; and hence, under many circumstances, the necessity for representative deliberative assemblies, responsible also to their constituents. But the very existence of a Representative Assembly implies the right of laying before that Assembly, by any one or more of its Constituents, the statement of any matter coming within the legitimate scope of the object of its appointment. And so it has always been held in this country; and "Petitions," as well to Parliament as to other representative bodies, and also to all responsible individuals, embodying such statement, and asking redress or otherwise, have always been in use. And, in the same way, the King of England being appointed for the benefit of the community, and for the discharge of certain duties affecting the commonweal, every Englishman has the inalienable right of directly "petitioning" the Crown. That "it is the birthright of the subject to petition" has been always held. Even though, in the reign of James II., the seven Bishops were tried for a libel contained in a petition to the King, the Crown Lawyers did not pretend to doubt, much less to deny, this inherent right. Nay, it is curious to find the Attorney-General saying, on the Trial of the seven Bishops:—"We all know the Council doors are thronged with Petitioners every day, and access to the King by Petition is open to every body."

What has been said in earlier chapters will realize to the

mind of every one the important applications of what are thus the principle and foundation of the Right of Petition. The point now to fix the mind upon is, the practical mode of truly exercising that Right, in conformity with that principle. Like every thing else which has a foundation in a principle, if that principle be lost sight of, the practice loses its propriety, and may become dangerous to liberty instead of an important means for the assertion and maintenance of it.

It was formerly the practice that, at the beginning of each Parliament, receivers of Petitions should be appointed. It was a wholesome practice, and relieved the people of much of the difficulty which now sometimes exists of getting a Petition brought forward. Into the practice of Parliament, however, as to Petitions, which has departed in many ways from the true and lawful system, it is not intended to enter. The righting of such mischiefs will come in the train with the consequences of a thorough understanding of the true functions of Parliament.

Petitions, when properly prepared, and duly signed, present an excellent mode of making known specific wants or wishes. But such Petitions must be the genuine results of the working of lawful Institutions in a lawful way. They must always, where not those of single persons, have been adopted openly and publicly, after full discussion;—not got up secretly by gathered signatures. By allowing the door to be opened to such a system, the proper intent and meaning of petitioning is defeated, and its efficacy is destroyed, and its trustworthiness is altogether taken away. It is a notorious fact that a practice has grown up of manufacturing Petitions. Signatures can be got to any Petition at so many shillings a hundred. Such a system can never help to support Free Institutions. It is vicious in itself, and demoralizing in its results.

Two instances occurred in the year 1850 which show very clearly how this Right of Petition is being thus habitually abused. A certain Petition was presented to the House of Lords from one of the largest towns in England. Some peer had reason

to believe it not genuine; and the result was the committal to prison of two persons for having had part in the presenting of a Petition proved to have been got up in the grossest manner of fraud and forgery. This is an example of the *manufactured* Petition, an article every day presented to Parliament. In the same year a public meeting was held in another of the largest towns in England, which was unusually full in numbers and decided in the interest excited. A long and eager discussion took place; and the result was the non-adoption of a certain document, in the nature of a petition, which had been proposed. But those who were defeated at this open and public meeting, immediately, to cover their defeat, adopted a course which is quite at variance with principle. They undertook to canvass the town and solicit signatures! If it were wanted to bring the Right of Petition into contempt this is the surest way to do it. An expressed public opinion, after full discussion, is set at naught, and artificial means are resorted to, to get up an appearance of an opinion. This is an example of the *solicited* Petition.

Under either mode there is not a shadow of guarantee for genuineness, either (and this is not a light point) of *intention*, although the pen yield to the personal importunity of the solicitor,—or of the *signatures* themselves. The only thing secured is, that every lawful safeguard shall be set at naught, and the Petition be the result of means taken, secretly and stealthily, instead of the result of open face to face discussion and a clearly and soundly formed opinion. It cannot be wondered at that this demoralizing and unlawful system has been actually converted, as will hereafter be shown, into a stepping stone for the crafty purposes of Centralization.

The case is very different, however, when a Petition is debated, approved of, and adopted, by free men, met together in the regular and fixed assembly of their Institutions of Local Self-Government.* Such a Petition reflects and embodies

* The numberless Petitions adopted by *Vestries*, on the subject of the Pope's attempts in 1850, go far to realize a recent illustration of what is thus insisted on.

a true and soundly formed genuine opinion, and must command respect.

It becomes, then, well worth consideration how the true Right of Petition may be best maintained unimpaired. Where so much is notoriously spurious, even what is genuine becomes infected by the character of the spurious; and the whole system ceases to command attention and respect. Practically speaking, neither the number of petitions nor of signatures ever affords the slightest true test of the state of real opinion upon any ordinary matter.

A careful consideration will be found to justify the following, as what reason and the spirit of the Common Law will dictate.

The inherent Right of Petition (or Memorial) can only properly be exercised, either to give information of a special fact reclaiming inquiry or redress, or to express true public opinion. It can only, therefore, be legitimately exercised,—1, by individuals as individuals; 2, by a special associated number, having some known and definite object of association, and in reference to that object; or, 3, as the result of a Public Meeting, or, more lawfully and influentially, of some discussion at the regular assembly of an Institution of Local Self-Government. It would, indeed, be a rule highly protective of Free Institutions and of the Right of Petition, if no Petition or Memorial were ever allowed to be received except such as comes either from one or more individuals on matters special to themselves as individuals (singly or jointly); from a special associated number, on the object of its association; or as the formal result of a Public Meeting,—either incidental, or, more properly, in the regular course of action of an Institution of Local Self-Government.

The petitioning to the proper quarter is another matter of importance. From all that has gone before, it will be clear that there will ever be a certain range of objects on which Petitions can only properly be addressed to the Local Representative Bodies and Officers; and a certain other and limited

range only on which the National Representative Body, or the Crown, can be properly addressed.

The abuse, whether through ignorance or design, of an important and inherent right, and the disregard of the proper mode of its exercise, have often been too gladly made excuses for unlawfully hindering or shackling the due exercise of that right. Hence the well weighing of the present points is of great importance.

From what has been already said it will have been seen that the whole end and result of Institutions of Local Self-Government are to give the opportunity and knowledge necessary to form true opinions, and to give to those true opinions a clear utterance after full discussion. Hence, while Institutions of Local Self-Government are active, the Right of Petition will be exercised in all genuineness and without any danger of abuse. When every man has the full means of bringing any subject up openly for public discussion, the fact of his not doing so will prove that he knows that his project does not deserve to have the support of public opinion; and no Petition to Parliament, unless it come from one of those Institutions, will command the slightest attention. Like almost every existing Social and Political evil, the too widely-spread practice of Petitioning in so irregular and morally worthless a manner, will, without the application of any special remedy, work its own cure when once Institutions of Local Self-Government are restored to true activity.

Many hundreds of illustrations of the mode formerly in use might be given. A few instances will serve the purpose. The following are from Petitions adopted in Shire-motes.

"Pray the Commons of the Shires of Essex and Hertford."*

"Pray the liege Commons of the Shire of Devonshire."

"Pray the lieges and the Commonalty of the Shires of Norfolk and Suffolk."

"Pray the liege men of the Shire of Sussex."

"To the right wyse and discrete Commens of this present

* Rolls of Parliament, 9 Rich. II., No. 19, &c.

Parlement assembled, prayen mekely all the communes of the Shire of Cornewaill."*

The following is from the celebrated Petition adopted by the Shire of Kent on the 25th of March, 1642, and addressed to the Long Parliament.

"To the honourable House of Commons.

"The humble petition of the Gentry, Ministry, and Commonaltie of the County of Kent, agreed upon at the general Assizes for that county."

The last-named petition, and its history, contain valuable evidence of the vitality of the Shire-mote (here called the "general Assizes," the latter falling upon it) at that time. The "assembled body of the county" is expressly named in the first paragraph; and the Journals of the House of Commons (1st April, 1642) contain evidence given before that House that "there were near two thousand men present when this petition was propounded."

Cities and boroughs might be illustrated in the same manner. One instance shall suffice. The City of London often appears. Thus, in 1 Rich. II. we find:—

"May it please our Lord the King of his grace in this present Parliament to grant to the Citizens of London the petitions under-written."†

And what is there under-written affords a good illustration of how completely a style of phraseology, like the above, which many persons interpret into the existence of a subservient condition, expresses merely words of course. When the substance of the Petitions themselves is come to, the words used at the beginning of each requisition, and there are many, are;—"The Citizens *demond*;" and the demands made are in accordance with the independent and self-relying spirit indicated by such a beginning.‡

The Kent Petition, already named, excited the bitter wrath

* Rolls of Parliament, 10 Hen. VI., No. 36.

† Rolls of Parliament, 1 Rich. II., No. 126.

‡ See 'What is the Corporation of London and who are the Freemen," p. 26.

of the Long Parliament. Nor was it the only instance of the hostility of that Body to the true exercise of the Right of Petitioning, or to other manifestations of the working of Institutions of Local Self-Government. As in every other case of Usurpation, these Institutions were felt to be a troublesome means of thwarting its proceedings. The language of a contemporary will best show how much this difficulty, and its consequences, were felt at that time, and well illustrates the different points in reference to the present subject.

"The end, if I mistake not, of the people's assembling of a Parliament is, principally and primarily, to receive their Petitions, to heare their complaints, and to redresse their grievances, to secure the good and wholesome Lawes, to abolish the bad and impertinent, and, instead thereof, to provide and make new for the people's further and future wellfare.

"There was a Petition presented the other week from the Counties of *Hertford* and *Buckenham*, for justice and confirmation of Liberty, and many other excellent benefits for the Publick:—but that cannot be heard, *nor have an answer*,* *although* they have been attended by some of the Counties ever since: yea, some would have had it cast out of the House. Such men doe most justly deserve to be themselves cast out as dirt, or as Salt which hath lost its savour. *Shall we be prescribed* BY THEM *what to Petition for?* Must wee present our grievances as shall please them, or as wee feel *their* pulse?"

This justly indignant language applies, with all its force, to the modern system of solicited Petitioning, and of Centralization in general. It is habitually sought, by the modern system, to be prescribed to men what to Petition for, and to get secret signatures to what pleases some few self-appointed contrivers of Petitions. Petitions have ceased to be the spontaneous expression of Public Opinion. How other matters are sought to be "prescribed for," and the "pulse"

* See before, Chapter VIII., the VIIIth Constitutional Safeguard.

of the few made necessary to be felt, need not be here again shown.

The same writer goes on in a strain which shows that the value of true Local Self-Government was then felt, and how men of independent spirit resented the centralizing course of the Long Parliament. He bitterly protests against the attempt to make "the chief man of every Town, and Parish, with the domineering Presbytary, rule the rost, and tiranize over the common people, their estates and liberties." And he makes an appeal to the people of England which is as applicable two centuries later as it was at the day it was written. The attempts made at the two times are not only alike in character, but in many of the colorable pretexts under which they are made:—"Now, dear Countrymen, lay your hands upon your hearts; and, if yee be willing, after all, to become slaves to your fellowes and servants, sit still and be carelesse, and keepe yourselves warme by your fires, and take a pipe or two of tobacco. But if yee be of my mind, and on my side, rouse up your spirits, and shake off this carelesse security: come and boldly call your own servants to account; * * * oppose the proceedings; know a reason of their preposterous actions; vindicate your power and privileges; and cause those treacherous machiavels, your false friends and deceitful servants, to be brought forth and judged, that they may receive a reward according to their demerit: * * trust no longer unto them, nor be any further deluded by them, though they use never so much feigning and fleering, though they looke never so gravely and demurely, speake never so fairly, declare never so strongly, sware never so devoutly, and fast never so frequently."*

It is with strict truth of principle that, in these passages, the invasion of the free right and sound practice of Petitioning is put as immediately connected, and part and parcel,

* "A Warning for all the Counties of England to awake speedily out of their dreames, and apply themselves to all just meanes for the recoverie and preservation of their Liberties." 1646. pp. 3, 9, 10, 16, &c.

with the encroachments on true Free Institutions, and on the right and practice of Local Self-Government.

Every earnest man will see that, instead of the rules above suggested lessening either the value or the exercise of the Right of Petition, the application of them would very greatly increase both, and do very much towards restoring the Right and Practice of Petition to their true position of legitimate practical influence, and, as an important one among other items, towards ensuring the re-application of the Constitutional Safeguards necessary to the well-working of Representative Institutions.

CHAPTER XII.

HOW MAY FREEDOM AND HUMAN PROGRESS BE MOST SUCCESSFULLY ATTACKED.

It is seldom to those who stand most prominently out in places of power, that all the praise or blame belongs of the measures brought forward by them. This is perhaps even more true of the blame than of the praise. A minister conceives a good end, and is heartily earnest to reach it; but he is obliged to commit details to others. On the other hand, there are always numbers eager to gain self-interested ends, and who can equally pander to the natural love of power which all men in authority have, and abuse the better instincts of a high-minded minister, by pretending means for carrying proposed ends out;—the real object being, in each case alike, but the getting opportunities of gain and authority for themselves. The greatest dangers to Free Institutions are traceable to these sources, much more than to any planned and open hostility to Free Institutions by any single ministry. It is the insidious course that the self-interested prompters who shelter themselves behind the respectability of responsible ministers know so well how systematically to follow, that works the surest mischief. Open attacks are seen, and promptly repelled. The stealthy assault advances so far before it is perceived, or, if perceived by some, believed by others, that the warding of it off at length becomes most difficult.

Every thoughtful writer has felt that the real danger lies in these stealthy attacks. "They are not," says Twysden, "the worst friends who use the greatest plainness to princes;

but such are the worst enemies that, under fair promises for their advantage, seek most their *own* advancement. 'They,' says John of Salisbury, 'are the most pernicious of all who, under the pretext of liberty and honour, seek to cover over idle folly;' according to that of Tully, that, of wrong-doing, theirs is the greatest 'who, in order that they may most deceive, put on the outward seeming of good men.'" * And again:—"Parliaments and Common Law are the principal means to keep greatness in order and due subjection; and therefore hated by those who would have kings set no bounds to their wills: *yet even them I take to be less dangerous flatterers than they who, as not looking at it, know how and where to wound the law, and, by steps, to win upon the people's liberty;* who, as they are more cunning, so are they not so easily discerned." † And Lord Somers admirably says:—"Few men at first see the danger of little changes in fundamentals: and those who design them usually act with so much craft as, besides the giving specious reasons, they take great care that the true reason shall not appear. Every design therefore of changing the Constitution ought to be most warily observed, and timely opposed." ‡ And Coke confirms this judgment when he says,—which he repeats many times over in various forms,—that "New things which have fair pretences are most commonly hurtful to the Commonwealth; for commonly they tend to the grievous vexation and oppression of the subject, and not to that glorious end which at the first was pretended." §

From all that has preceded, it will have become clear what are the sort of means usually employed by those who seek to gain their own ends at the expense of the people, and, for this purpose, abuse equally the confidence and good desires of ministers, and the opportunities which Parliaments, a free press, and popular sympathies, afford. But it is so important to see distinctly what the nature of this danger,—

* Twysden, p. 64. † Ib., 181.
‡ The Security of Englishmen's Lives, p. 78.
§ 2 Inst. 540.

one which grows with the more peaceful aspirations of society,—is, that it will be well to recal at one view some of the principal of the pretences used, and means employed, to accomplish such unhallowed purposes.

The direction of the arts used by those who would most effectually sap the foundations of Free Institutions, were perceived and stated, more than two centuries ago, in a work which has been already quoted. Among the rules by which "the sophistical or subtill tyrant is to hold up his state," the following are enumerated.

"To pretend care of the Common-wealth, and to that end to seem loath to exact tributes and other charges; and yet to make necessity of it, where none is.

"Sometimes to give an accompt by open speech and public writing of the expence of such taxes and impositions as he hath received of his subjects, that he may so *seem* to be a good husband and frugal, and not a robber of the Common-wealth.

"To that end, to bestow some cost upon public buildings or some other work for the common good; especially upon the ports, forts, and chief cities of his realm; that so he may *seem* a benefactor, and to have a delight in the adorning of his country, or doing some good for it.*

"*To forbid feastings and other meetings, which increase love, and give opportunity to confer together of public matters,*—under *pretence* of sparing cost for better uses." †

In another place the last maxim is given in another form, showing how its significance was truly felt:—"Forbid guilds, brotherhoods, feastings, and other assemblies among the people; that they have no means nor opportunity to conspire or confer together of public matters, or to maintain love amongst themselves; which is very dangerous to a tyrant." ‡ And the mode of indirectly effecting this is, in fuller detail, elsewhere pointed out. Alluding to Aristocratic Rule,

* See before, p. 57.

† The Prince; or Maxims of State. By Sir Walter Rawley, p. 27.

‡ Ib., p. 26.

and the means of its maintenance, it is said:—"Compel their own sort, to wit, the rich men, by great penalties, to frequent their assemblies for choosing of magistrates, for provision of armour, warlike exercise, making and execution of laws, &c. By that means *seeming* to bear a hard hand over the richer; but to suffer the poorer and meaner sort to be absent, and to neglect those assemblies, *under pretence* that they will not draw them from their business and private earnings; yet, withal, to cite thither some few of them, namely, so many as are easily over-matched by the richer sort, to *make a show* that they would have the people, or poorer sort, partakers likewise of those matters; yet terrifying those that come to their assemblies with the tediousness of consultations, and greatness of fines if they should misdo. *To the end* to make them unwilling to come again, or to have to do with those consultations. By which means the richer sort do still govern the state." *

This description so well pourtrays the means which have long been systematically pursued in Europe to undermine constitutional liberty and the Common Law Rights and Responsibilities of Freemen, that it leaves little to add, except more specifically to enumerate some of the "guilded dissimulations and specious pretences" under which the partizans of the functionary system and helpers on of the spread of Centralization, seek "to get power into their own hands, thereby to enable them to destroy and subvert both laws, liberties, and properties at last, and to introduce new forms of arbitrary government." †

As James II. sought to bring Papacy back into England by measures taken "under the deluding names of Liberty of Conscience and a Magna Charta therein," ‡ so, in modern times, the ends of Centralization, and the overthrow of the Common Law and of the consciousness of the Rights and

* The Prince; or Maxims of State. By Sir Walter Rawley, pp. 10 & 11; and see p. 30.

† Prynne's Legal Vindication of the Liberties of England against Illegal Taxes and Pretended Acts of Parliament, p. 22.

‡ Memorial to the Prince of Orange.

Responsibilities of Freemen, are sought to be accomplished by loudly paraded pretences of the Public Good, sympathy with the poor, care for the public health, regard for economy, and so forth. A state of sickly but widely spread sentimental philanthropy * is cherished and appealed to, and made a principal instrument.

A feeling of the troublesome nature of the burthens thrown upon individuals by the practical carrying out of the spirit of Duty and Responsibility which the Common Law cherishes, is endeavoured to be engendered; and the unfairness is carefully insinuated and sympathized with of the weight of Public Duties falling on unremunerated shoulders. The selfish desire to shirk the performance of unbought duties is encouraged: and men are urged to regard themselves only, and not their neighbours, as the sole objects of their proper regard and duty. They are encouraged to seek to commute every personal service which the Common Law requires, into money payments; and to look to the State to do every thing for them, instead of,—as constituent members of the State,—using every effort to do for themselves what an active sense of public duty and responsibility teaches to be needed. The appeal is, from first to last, to the selfishness of men, not to the noble sense of duty and responsibility. It is to self, in its narrowest, most material, and mercenary form.

Shackles having been carefully put upon the true and free action of all Institutions of Local Self-Government,—so that men are hindered from giving attention to, and so understanding, the matters which concern them, and from deciding on them, and carrying them out,—zeal and energy are thus killed out, and the continual impulse to advance is quelled as far as possible. This having been accomplished, it is, with much profession of sympathy and indignation, pretended that Local Administration is a failure [having only had the short
[illegible] 14 centuries], and
[illegible] central interference!
[illegible] shackles has itself
[illegible] very circum-

* [illegible] 72, &c.

stance is made the excuse for drawing those shackles still closer.

Any inapplicability which the changes of circumstances, or the advance of science, may have caused in what was, at the time it was done, up to the mark of the conditions and the science of the age, is carefully represented in its reference to the existing (and often directly reverse) conditions of society and state of science; and then held up as exhibiting "vast monuments of defective administration, lavish expenditure, and extremely defective execution;" and those who would ensure adaptation to the wants of the present day by the healthy means of a stimulated sense of duty and responsibility, instead of by the degrading and blighting means of centralized dictation, are called "ignorant, conceited, obstinate, corrupt, and obstructive,"* by those who "praise themselves indirectly by the accusation, and seek to benefit themselves directly by the confiscation founded on it."†

Under such "fair flattering pretences" it is, "pretending to avoid divers mischiefs," that, stealthily and systematically, the ends of Centralization are accomplished;—the fair promises made being, as has been well expressed by Coke, "in the execution contrary, *ex diametro*; namely, to the high displeasure of Almighty God, the great let, nay the utter subversion, of the Common Law, and the great let of the wealth of this land."‡

The means by which the end is sought to be accomplished, equally crafty and stealthy as the pretences themselves, must also be as shortly enumerated. They have become so systematically employed that they may best be put as Maxims.

Keep carefully hidden, and unsought into, the true practical tendency of every measure: seek to fix attention only on the pretended evil to be remedied.

Employ the machinery of manufactured "evidence" to suppress the truth, l[illegible]

* See many illustr[illegible] Commissions," P[illegible]

† Sydney Sm[illegible]

‡ 4 Inst. 4[illegible]

of facts, and prevent sound inference; and thus to present an *ex parte* case, picked and culled, to forward the special object; that, so,—Parliament and the public being by this "cunning artifice of words utterly deceived,"*—a factitious expression of public opinion may be got up from those many who find it much less trouble to adopt the opinion and facts of others, than to search into the reality and truth of either for themselves.

Instead of the measures proposed being "so plainly and perspicuously penned" that every one may understand them, take care to wrap them up "cunningly and darkly" in a great parade of science,—the more really empirical and spurious the better; of detailed technicality,—no matter how impracticable and crude; and in the form of verbose and tedious Acts of Parliament. All this will effectually prevent the merits of any measure itself being understood or generally studied.

Seek every means and pretext for increasing the number of functionaries, as the surest means of attaching, by the tie of self-interest, an army of supporters as widely spread and numerous as possible.

Encourage the disposition to look to Parliament as the means of healing every grievance; as well in relation to affairs within its lawful province, as to the affairs of local associated Groups.† Leave no means untried to eradicate the spirit of self-respect, self-exertion, and responsibility. Carry out to the utmost extent Burke's maxim, that the aim of the enemy of constitutional freedom will always be, "that the House of Commons should have every right of the people entirely dependent upon their pleasure."‡

Greatly commiserate the over-work which falls on members of the House of Commons in their zeal for the discharge of their onerous duties; and propose that legis-

or

* Coke, 4 Inst. 42.

† Lord Brougham encourages this most pernicious idea. See his "Political Philosophy," iii. p. 31.

‡ Thoughts on the Causes of the present Discontents. 1770.

lative powers should be delegated to secret, irresponsible, Crown-appointed Boards, as being "well calculated to relieve the labours of Parliament"!!*

Create a condition of dependence, as widely as possible, so as to prevent opposition even where there is no direct personal motive of support, present or in expectancy. This is to be accomplished by getting wide powers of intermeddling with private property and interests, so that the screw may be put on any one who shall not be sufficiently subservient, and that the fear of damaged or neglected interests, in case of any want of compliance or support, shall become general.

Undermine and shackle, as far as possible, the action of all Institutions of Local Self-Government, "fettering their jurisdiction with many limitations" till their "authority by little and little vanishes;"† and then hold them up to ridicule for their inefficient action, and proffer the protecting mantle of a Central interference against their inefficiency.

Encourage the self-importance of all local busy-bodies; and invite them to secret correspondence and to getting up anonymous charges; and hold out the prospect of a reward to every form of Social Treachery.

Hinder, as far as possible, all discussion, or the dissemination of other information than that promulgated, as above, "by authority." For this end, devise means by which even the most ordinary and obvious duties of freemen shall be committed to the Discretion of Crown-appointed individuals.

Induce the substitution of occasional promiscuous, and therefore unprepared, "Public Meetings" for the regular, fixed, frequent, and accessible meetings together of true Institutions of Local Self-Government; so that the form of an apparent public sanction shall be easily got to that which is merely specious, and cut and dried; instead of the reality of a public opinion, formed after full knowledge and free discussion, being expressed

* Lawes's Public Health Act, p. 29, note (*l*).
† Coke, 2 Inst. 540.

As a great means to this end, procure, as extensively as possible, the substitution of a system of delayed and individual Polling for the only lawful method of doing everything in open Folk-mote, where every man may discuss, and all must hear discussed, the matter in hand, and so be able to form and utter a true opinion. Thus private influences may be brought to bear on individual self-interests, hopes, and fears; and the danger of opinions being given upon true knowledge, and with a sense of responsibility and as a public duty, will be effectually avoided; while the empty and therefore harmless form and name of election and representation will be kept up, so as to delude the unthinking.

Encourage the system of secret solicited [and therefore, always, ungenuine] Petitions, instead of the only lawful one of genuine Petitions adopted after open discussion and determination.

Set interest against interest, and class against class; always representing the rich as the natural enemies to the poor, landlords as the natural enemies to tenants, and so on. And, to ensure this, give to the rich, who are best able to protect themselves, an additional and factitious advantage over the poor, in precise proportion to their less need of it, and in direct violation of that principle of the Constitution and the Common Law which regards every freeman as equally capable of thought, and equally entitled, and bound, to exercise it; and which teaches that truth and right are the more likely to be reached the greater number of independent minds there are brought to bear upon any matter in question.

Foster Local Animosities, that both parties, or one of them at the least, may, to gain their ends, put themselves into your hands.

Always remember, and act upon, the rule laid down by Tacitus,* that "there is nothing more useful, towards gaining ends of conquest, than the disunion of the different persons or places sought to be subjected. For it is rare that two or

* Agricola.

three will heartily unite to resist the common danger. Thus, though they prove restive and fight singly, the whole may easily be overcome."

Fix as heavy burthens on every place as possible,—though disguised under various names and pretences, and under boastings of economy;—burthens which shall not only be immediate but permanent, so as to make any hope of further improvement by self-exertion or self-reliance impossible. Thus will the land be delivered into your hands bound hand and foot.

Make your encroachments boldly, as to individual instances, though stealthily as to the open avowal; not caring to stick to the letter of even the Statute which you may have gotten, relying on the heavy cost of obtaining legal redress by any place or person,—while you yourselves have the public moneys and the government support to fight with,—as an effectual security against resistance to your unlawful acts.* These encroachments, thus submitted to because the sufferers are deprived of the power of resistance, will grow into precedents, every one of which strengthens your power, and causes Free Institutions to become more and more but a name and the Common Law but a tradition.

Observe, ostentatiously, some legal and parliamentary forms, taking care that the substance and spirit are entirely emasculated.

Under cover of some of these forms, seek every opportunity to smuggle, step by step, still more encroaching Statutes through Parliament, at times and in manners when it

* "It must have been the poverty of those upon whom such warrants have been executed, that deterred or hindered them from contending against the exercise of such a power." Lord Camden, 2 Wilson's Reports, 286. This was said of the *Excise*. But the same means are used by every centralized Board. They are the one reliance, for instance, of the (so-called) *Board of Health*. See "Instructions to Inspectors of Board of Health" (Report, July 1849, p. 134). "You will remind the person applying, or the ratepayers, of the *expences* incurred by any delay, *and ask from what fund* the prosecutors of the contested question expect payment"!!

is impossible or improbable that any one will be aware of the proceeding, or prepared for it.

Get put into the shape of an ink and paper Statute any troublesome rule of Common Law, in favour of whose practice there is a natural prejudice; taking care in doing this to narrow its application as much as possible. You will thus be able, on the first convenient season, to deal with it as a mere Statute, and to alter, neutralize, or wholly overturn it as suits your convenience.

It is by the adoption of some or all of these means that the promoters of Centralization have succeeded in establishing themselves and their demoralizing system, in any country which has once known true Free Institutions. By such means it is that they effectually undermine the sense of responsibility and duty in individuals and districts; and thus sap all the securities of Free Institutions, and overset all the Great Principles and wholesome practice of the Common Law.

CHAPTER XIII.

HOW MAY THE ATTACKS OF DESPOTISM BE MOST EFFECTIVELY RESISTED.

THERE are two separate tasks which the earnest man always has to do:—*first*, to guard against the approach of that which is bad; *second*, to take onward steps to the attainment of that which is good.

Reserving to a later chapter the consideration of means towards actively amending what of degradation Free Institutions have actually undergone, by the encroachments of Centralization, let attention be now fixed upon the means by which attempts at further encroachments may be resisted. All that is thus done will be a direct gain towards achieving the further object of restoration and amendment.

The first essential is an earnest faith in Free Institutions, as the one only means by which man can live in a way worthy of the nature given to him. It must be a faith which no picked instances, set forth by the enemies of Free Institutions, can shake, but which has so far taken the trouble to understand human history as to know that never has there yet been a specious slur thrown on the working of Free Institutions which has not its true, however sad, explanation in the evil influences produced by Despotism and Centralization themselves;—influences which cannot, in countries long habituated to such a system, be at once thrown off; and which can never wholly be thrown off until the principles of Local Self-Government are understood and recognized as the only foundations of Free Institutions.

There are few countries which do not retain some traces of Institutions fitted for freemen; though, in too many, they are

slight; in none so many and, happily, so capable of prompt practical re-invigoration as in England.

The man who has an earnest faith in Free Institutions, having thoroughly mastered the principles embodied in the idea of Local Self-Government;—the principle of full and free discussion; of the Law as springing from the people and being administered by them; of political, moral, and social ever-co-extensive Right and Responsibility;—will oppose a fixed and steady resistance to every proposed departure from any of those principles, whatever the pretence, however specious the grounds, however slight the departure may be. He will always remember that the Principles of truth—and man and man's nature are a part of everlasting truth—change not, and will not bend nor bow to specialties, but that specialties must be made to bring themselves into accord with principles.

To be able to take this ground, "every design of thus changing the Constitution must be most warily observed." * No specious representations, put forth "by authority," must be accepted; but it must rather be remembered that every one of these comes forth suspiciously, both as to authorship and purpose, and that it is entitled to no reliance from any honest and truth-seeking man. True investigation must be insisted on. Every means must be taken truly to understand, and to make others understand, what will be the practical results of every measure, and how far, and wherein, it infringes upon the principles of true Local Self-Government, either by hindering or fettering it, or by substituting some of the machinery of Centralization for it.

The most thorough exposure must be given, by all available means, private and public, of the actual nature of the proposition, its folly or dishonesty, and its impractical nature as to the realization of the results pretended to be sought by it and pompously and speciously paraded to entrap the unwary. Both the thing itself should be exposed, the surreptitious means employed to effect it, and the untrustworthy nature of

* Somers, as before, p. 78.

all the materials for information which those seeking to attain their object have supplied.

Whatever Institutions of Local Self-Government do, in any shape, exist, it should be felt a duty and a responsibility to take part in them; and, as opportunity arises, the evil working of all encroachments, and their violation of the Rights and Duties of freemen, should be pointed out; and thus resistance to any fresh attempts be most effectively stirred up.

The smuggling of Bills through Parliament should be resisted by all available means, either in or out of the Houses of Legislature; the resistance to such a course being put upon its true ground, and not upon any narrow ground of individual expediency.

Efforts like these will never be lost. There is no case in which they will not produce their fruits, and serve to check some of the mischief, though they may not succeed altogether. And every inch of success thus gained in resistance is a check to the system, which perseverance only is needed to render general and lasting.

The spirit of subserviency has already gone far in England. It is being continually said, as decisive of a question, what "government will consent to," and what it will insist on. This language is founded upon the idea of Centralization, that the State is one thing, the people another: it acknowledges Representative Institutions a mere form and disguise; that the Crown, which is lawfully only a ministerial office, has usurped all legislative functions; and that the usurpation is to be tamely submitted to. The apathy and indifference with which, in consequence, such encroachments are looked upon, cannot but be disheartening, especially since this indifference to the duties and responsibilities which belong to every member of a free state, is covered by many under the pretence of distaste for the turmoil of politics,—and they would even exalt their selfish dereliction of duty into a virtue.

It will always, unquestionably, need considerable moral courage to make head against such sources of discouragement.

And this is increased by the craft with which the forwarders of Centralizing schemes always avail themselves of any cant or fashion of the day as a stepping stone to their purposes, and seek to crush those who resist their encroachments under the stigma of opposition to "reforms." But no man can do a good work who is not prepared to stem such obstacles. The more the mass of men find it convenient selfishly to yield, the more it is needed that those who do know and value the difference between Centralization and Local Self-Government, between Arbitrary Rule and Free Institutions, should be up and doing to denounce the "damnable wickedness" of the former, and assert the everlasting truth of the latter.

Were there but two or three Members of the House of Commons who had thoroughly mastered the true spirit and principles of Local Self-Government, and its practical development in the Common Law of England,—and who had the earnestness and the moral courage to fulfil their duties in their places in Parliament,—it would be sufficient to stem the tide of this whole system; and to make felt the importance and necessity of holding fast to those only foundations of freedom and lasting welfare which are to be found in the practical activity of true Institutions of Local Self-Government.

CHAPTER XIV.

PRACTICAL ILLUSTRATIONS OF THE PROGRESS OF CENTRALIZATION IN ENGLAND.

A HISTORY of the rise and growth of Centralization would be a work of great extent. It is not to be attempted here. What is proposed is, to give an idea of the kind of way in which the Free Institutions of England have, for a long time past, been undergoing attack by the gradual inroads of that blighting system.

The point of time on which attention becomes fixed in pursuing this inquiry, is the Revolution of 1688. To some this may sound startling. It will not be so to those who have truthfully studied the characters and events of the times succeeding that date. Nothing is more certain than that such a result was the last that was dreamed of by those who hailed that Revolution with gladness, and helped to forward its consummation; but no sophistry and no perverted picture of events can get rid of the fact that the systematic sapping of the Free Institutions of England,—less dangerously attacked before by occasional open arbitrary attempts,—is to be dated from the Revolution of 1688.

The Court of Star Chamber, a court which, like all similar Bodies, had only gradually reached the powers it used at last, and the Court of High Commission, had already been abolished. The terms in which they were abolished are remarkable, and well worthy of careful consideration.

By the Statute abolishing the Court of Star Chamber it is declared that that Court had been "found to be an intolerable burthen to the subjects, and the means to introduce

an arbitrary power and government." It was declared to be for ever abolished; and further,—and which is what claims special attention,—it was declared that "from henceforth *no Court*, Council, or place of Judicature shall be erected, ordained, constituted or appointed within this realm of England or dominion of Wales, which shall have the same *or the like* jurisdiction as is or hath been used, practised or exercised in the said Court of Star Chamber." It is further specifically added "that neither his Majesty nor his Privy Council have or ought to have any jurisdiction, power, or authority, by English Bill, petition, articles, libel, *or any other arbitrary way whatsoever, to examine*, OR *draw into question, determine*, or dispose of, the lands, tenements, hereditaments, goods or chattels of any of the subjects of this kingdom; BUT that the same ought to be tried and determined in the *ordinary Courts of justice and by the ordinary course of the law.*" * That is, the declarations of chapters 42 and 43 of Magna Charta† are re-declared to be inviolable, and the Institutions of Local Self-Government to be the only lawful means of administering justice.

The Statute abolishing the Court of High Commission is no less precise and to the point. By that Statute it is declared that "*no new Court* shall be erected, ordained or appointed within this realm of England or dominion of Wales, which shall or may have *the like* power, jurisdiction, or authority as the said High Commission Court now hath or *pretendeth* to have; but that all and every such letters patent, commissions, and grants made or to be made by his Majesty, his heirs or successors, and all powers and authorities granted, or pretended or mentioned to be granted thereby, and all acts, sentences, and decrees to be made by virtue or colour thereof, shall be utterly void and of none effect." ‡

These two Statutes exactly agree in spirit and effect with the declaration already made in the Petition of Right.§

* 16 Car. I., c. 10. † See "Government by Commissions," p. 132.
‡ 16 Car. I., c. 11. § See "Government by Commissions," p. 150.

It is truly melancholy to be compelled to feel that the declarations contained in these Statutes, as well as the great declarations of Magna Charta on which they were founded, have been utterly disregarded since; that, if not exactly the same, yet very many, and more ramified, of "*the like*" Courts and jurisdictions have been established, since the Revolution of 1688. Such is the value of paper bulwarks.

One of the most strongly felt grounds of complaint against James II. was his attacks upon the ancient Institutions of Local Self-Government; the true value and importance of which were then well appreciated. "'Tis known to all," says the Memorial of Invitation addressed to the Prince of Orange, "that, to destroy our government under colour of Law, there have been causeless writs of *quo warranto* brought by the king against most of the cities and boroughs of the kingdom." And again:—"There have been infinite endeavours and artifices openly used to destroy the customs, privileges, charters, and governments of all the cities and boroughs." "There is a public attempt, authorized by the king, to subvert the *very foundation** of the whole civil legal government of the kingdom; that is, the people's free election (in the customary established course by counties, cities, and boroughs) of their deputies to act and consent for them in Parliament unto all laws to be made and repealed." "'Tis not now practicable to have the legal free consent of the kingdom unto the making or repealing of any laws (*without which they cannot be obligatory*†) *until there be a just restoration* of the customs and liberties of the cities and boroughs, which have been illegally and treacherously surrendered, or unduly wrested from them." Finally, it is declared in the same Memorial, that, "Our king, in imitation of his brother of France, strives to bring all the offices and magistracy of the kingdom, that were legally of the people's choice, to be solely and immediately depending on his absolute will for their being, whether they

* Thus in *Italics* in the original folio printed edition.

† This passage should be well noted. This is what is formally declared in the *Memorial* on which the Prince of Orange came over.

arise by our Common Law or be instituted by Statutes or Charters."

Such were the deep-felt grievances which made James and his government detested, and led to the invitation of William of Orange. Such were the grievances specifically set forth to him, as the grounds of invitation to him. It was in hope that these grievances would be redressed, and on promise that those to whom the reins of power were transferred would aid in so redressing them, that the Revolution of 1688 was rejoiced at and supported. Grievously was that hope disappointed, that promise broken. To this hour they have never been redeemed. Too convenient were the means of corruption found to be. Instead of the grievances to which James had been a party being redressed, the government which succeeded him did but better his instructions. "The fact is upon record," says the learned historian of Municipal Corporations,* "that some of his [King William's] warmest supporters were the first to revive and insist upon the rights of the *select bodies*; and more was done during this reign to confirm the usurpations of corporations, the extensive rights of Common Councils, and the interference of non-residents, than in any other period of our history."

The disappointment of many of the earnest supporters of the Revolution is well shown in the following language of one of them:—"As I was," says he, "not only an eye-witness of the illegal and arbitrary proceedings in the reigns of King Charles and King James the Second, but myself a sufferer by them, I heartily concurred in the *Revolution* with all the little assistance in my power, as well as my good wishes. I was in hopes that we should have reaped all the advantages from that great and glorious event which the sincere and most zealous promoters of it were promised, and expected. But many of us, who were most cordially devoted to the Interests of Liberty and our Country, complained, and I think with too much reason, of our disappointment. * * *

* Mr. Serjeant Merewether, since Town Clerk of London, Vol. I. p. liv.

We were willing to believe that the Bill of Rights (though not so full, in many points, as we could have wished) and the limitations of the Crown in the Act of Settlement, would have been sufficient to secure us from any dangerous attempts on our liberties for the future. But it is a melancholy consideration to reflect on the difficulties which the People are almost constantly obliged to struggle with, against the Incroachments of Courts and Ministers; who, though they have frequently been the most strenuous advocates for Liberty, and seemingly the most zealous in the prosecution of other bad Ministers, yet, if they happen to succeed them, too frequently renounce their old Principles, and, from the remembrance of the trouble they gave to their predecessors, become the most dangerous and inveterate enemies of those who adhere to the same principles. * * * As I am still in the same way of thinking that I was forty years ago, it is with great grief and astonishment that I see the fundamental principles of our Constitution struck at, the great ends of the institution of parliaments attempted to be rendered useless, by the open and avowed pleading for their dependency on the Crown; a doctrine which the most shameless abettors of tyranny and arbitrary power, in former times, would have blushed to have published: and, to complete their wickedness, they are covertly endeavouring to undermine the Rights and Privileges of an English Jury, that great security on which our lives and properties depend;" * and he speaks further on, "with indignation and abhorrence at these vile betrayers of the interests of their country."

A glance must be now taken at a few among the numerous onward steps which Centralization has, ever since that Revolution, been steadily taking; to the destruction alike of the Representative Responsibility of Parliament, and of the Rights and Responsibilities of every Institution of Local Self-Government.

An early fruit was the "Septennial Act," (1 Geo. I., sta-

* Preface to Sir John Hawles' Englishman's Right: a Dialogue on Juries, 1731; pp. iii. iv. v.

tute 2, c. 38,) passed in 1716; by which, for the first time in the history of England, parliaments were authorized to sit for seven years. This was a Statute which it was clearly out of the power of a Parliament elected for three years, to pass. Force did what law and justice forbade. That act aimed a deep blow at Local Self-Government, and erected Parliament into a mere oligarchy, always necessarily more or less subservient to the Crown. No single step ever entailed on England greater evils. Those evils have been numberless.

The old law, for centuries, has been shown to have been, the holding of Annual Parliaments; and, in practice, two were often summoned within one year. Charles the Second's ministers first ventured upon a three years' act, which William the Third's government confirmed, as a first step;*—this further one, of making it septennial, soon following. Carefully were the people thus drawn off from that habitual consideration of the affairs which concern them, by which alone any Constitutional Safeguards can be maintained, and by which alone can an intelligent vote be at any time given for a Member of Parliament. Soon was the declaration forgotten that, without the true consent of the people, no laws, made nominally by Parliament, "can be obligatory." †

In the same spirit an act was soon after passed which, though confined to the City of London, is of great importance on account of the spirit it indicates, and of the high and noble stand that City had always made for Free Institutions; of which, indeed, itself stood the model to the whole world. In the year 1725 an Act was passed for effectually narrowing the range and vitality of the Institutions of that City; an Act passed only, and literally, by means of the sword and the cannon, and which has borne its bitter and evil fruits in the City of London, from the hour of its passing even until now. It was a most crafty blow at the principles and practice of Local Self-Government.‡

* 6 & 7 W. & M., c. 2. † See before, p. 194.

‡ See "The Corporation and the Freemen," throughout.

A practice which serves most effectually to help the same ends, seems to have become established about this time, and has certainly been only sanctioned by Statute since then; namely, that of delayed Polling at Elections.

It would be hardly in place here to enter at any length into the argument by which it may be clearly shown that this modern practice is altogether an unlawful one. A practice so mischievous and so entirely at variance with the whole spirit of the Common Law, must not, however, be passed by without some direct remark.

The spirit and policy of the Common Law have been shown to be, that, on every matter, all the freemen should have the duty of meeting and conferring well together before deciding; that, so, all the merits of the question shall be understood, and the public welfare, and not private bias, shall animate all; and that they shall, after such discussion, decide openly and publicly. By allowing the practice of a delayed Poll, it obviously follows that men,—having the opportunity of voting without attending the folk-mote,—cease that duty the performance of which it is that can alone make them familiar with the discussed merits of any question, impressed with a moral sense of due responsibility, and competent to give their votes. They become liable to every sinister influence. Hence the enormous election abuses which have grown up. The Voter is no longer the thinking, reasoning, and judgment-forming being that the Common Law seeks to make him, and whom alone it recognizes. He is made into a mere Vote-giving machine.

It has been seen that formerly the elections of Members of Parliament had to be made within three hours. Sir Thomas Smith expressly tells us that "the knights of the shire be chosen by all the gentlemen and yeomen of the shire, present at the day assigned for the election: the voice of any absent can be counted for none." * Any Poll, in the modern sense, (for the word merely means counting heads,) could only be lawfully taken in the obvious mode of a *Division*.

* Commonwealth, Book II., ch. 3.

Immediately connected with the last point as to its Political, Social, and Moral effects, though not next in order of time, is the taking out of the hands of the people themselves, to whom alone, by all the principles of Common Law and Common Sense, it belongs,* the determination of who among themselves are entitled to votes; and the pretending to put this into the hands of irresponsible persons, set over them by others. The creation of "Revising Barristers," and all similar contrivances, are carrying Centralization to a great length; and the fulfilment of such a purpose is due to later times. These contrivances have the twofold effect of still further killing out the sense of public duty and responsibility in the people, and of extending the system of functionarism. And the latter is done in a mode of great importance to the enemies of Free Institutions. It forms a part of a long growing system of undermining the independence of the Legal profession;—a profession whose pride it should be to maintain Free Institutions and the Common Law,—but which it is obviously the interest of the friends of Centralization to bind over, by self-interest, to the support of that pernicious system.

The next measure which shall be here noticed is one of peculiar obnoxiousness and iniquity. It is usually known by the name of Sturges Bourne's Act (58 Geo. III., c. 69, § 3); and its object is to give to those who have, and to take away from those who have not even that which they have. It gives a number of votes, not according to the number of minds, but the amount of property. Altogether passing by the clear fact, and the indisputable Principle of the Common Law, that every Freeman is a unit in the State, having his own inherent personal rights, among which are the right and responsibility of discussion, and of expressing the determination of his own mind on that discussion,—the *place where* he is so to discuss and express being the only thing determined by his property,—this act treats men as already

* See "Corporation and Freemen," p. 39; and before, p. 152, note.

made into mere voting-machines:* in the true spirit of Centralization it treats materialism as the sole foundation and criterion of human good and ill, and men as the mere mouth-pieces for so much worth of possessions.

It is the number of different minds brought to bear upon a subject that is what the Common Law, as well as plain logic, regards. The value of an individual opinion, or the strength of one mind, can be in no way affected by the number of acres the owner of that mind holds. There is no ground on which this unrighteous Act can be supported. It is purely oligarchical in intention and result. It gives to those to whom their wealth of itself already gives a vantage ground, the most unequal additional advantage of counting manyfold over the man of less wealth but equal brains, and who most needs the full protection of equal laws. It proclaims material wealth, and not humanity, to be the sole object of care to those who proposed it and have still further applied it. There is no greater blot upon our Statute Book than Sturges Bourne's Act.

The instances thus cited (which might unhappily be very greatly extended) will serve to direct attention to the mode in which the spirit and first principles of the Common Law as to the inherent rights and responsibilities of Freemen,—the very elements of Free Institutions,—have been set aside and undermined by pretended Statutes; the effect being continually more and more to lessen the character, dignity, influence, and practical truth, and therefore the efficiency, of all Institutions of Local Self-Government whatsoever, and to reduce them, for the most part, to forms and names only.

Attention may now be called to some other classes of measures which violate in a direct manner the requirements and protections asserted by the Common Law, Magna Charta, the Petition of Right, and the Statutes repealing the Courts of Star Chamber and Court of High Commission; which take the functions of accusation and judgment,—of the Administration of the Law as well as of Law-making,—out

* See page 198.

of the hands of those to whom they alone lawfully belong; and thus, both directly and indirectly, violate the Principles and Practice of Local Self-Government, and trample upon those inherent rights and responsibilities of Freemen the maintenance of which it is the one purpose of the Common Law to guarantee.

The Excise system may claim first attention. Attempted in the reign of Charles I., it roused universal indignation. The House of Commons argued the matter at full length; and, without a single dissentient voice, voted and adjudged such a system to be against Law and contrary to the Petition of Right. A conference afterwards took place upon it with the House of Lords, at which Sir Edward Coke took part; who maintained the utter illegality of such a system in every respect: and the result was, that the Lords concurred with the Commons, and adjudged such a system to be "against Law and the Petition of Right, and only fit to be eternally damned." *

Although but a very small part of the oppressions and mischiefs of the Excise system ever reach the public ear, enough does reach it to make the system detested by every honest man. From its first imposition, those who live by it have been constantly, as it is in the nature of all the instruments of Centralization to do, seeking to stretch its powers by means of Statute upon Statute; the effects of every one being to violate still more the Common Law, to fetter still more the energies of freemen, and to narrow the scope for independent enterprise;—the object being to make places for a greater number of functionaries at the expence of the people. Long ago did Blackstone, no unfavourer of prerogative, declare, ere the system had approached its present monstrous height:—"Of this summary nature [i. e. contrary to Magna Charta and the Petition of Right] are all trials of offences and frauds contrary to the laws of the *Excise*, and other branches of the revenue: which are to be

* See fuller on this in "Government by Commissions," p. 260, and following.

inquired into and determined [not, as the Common Law requires, by two different bodies, both of them made up of unbiassed freemen, but] by the Commissioners of the respective departments,* or by justices of the peace in the country; officers who are, all of them, appointed and removable at the discretion of the Crown. * * * When we consider the various and almost innumerable branches of this revenue, which may be in their turns the subjects of fraud, *or at least complaints* [by the interested functionaries] of fraud, and of course the objects of this summary and arbitrary jurisdiction, we shall find that the power of these officers of the Crown over the property of the people is increased to a very formidable height." †

Such is the crafty mode in which these arbitrary powers are wrapped up, so as the more easily to entangle any man the Crown-appointed functionaries please, and to render any redress for the greatest grievance hopeless, that even the most able of the Commentators of Blackstone is obliged to confess that "in such a number of Statutes it is not safe to speak with too much confidence." ‡

Well might Bage be urged, in 1787,—though the system had not then reached near its present height, nor the multiplication of Statutes gone nearly to its present length,—to "lend all his powers to write a history of the Excise, with cases; showing the injustice, the inequality of clauses in Acts, and the *eternal direction every new one takes towards the*

* The perpetual necessity for appealing to these irresponsible tribunals, and the spirit of subserviency thus engendered, are well expressed in the following lines in the Anti-Jacobin:—

"Oh woe is me," then cried the Duke,
"Ne mortal wight but errs:—
I'll hie to yon twaie coneynge clerkes
Yclept COMMISSIONERS."

—*The Duke and the Taxing Man*; Poetry of the Anti-Jacobin, p. 33.

† Blackstone's Commentaries, vol. iv., p. 281.

‡ Mr. Justice Coleridge's edition, note 1 to p. 281.

oppression of the subject. It might be the most useful book extant." *

The Excise, as an unlawful and unconstitutional mode of raising the revenue, naturally leads to some allusion to the *National Debt*, another of the devices of Centralization, to which its rise, growth, and present condition are alone owing. It cannot be too often repeated that the National Debt is *entirely and unmixedly the creature and growth, as it becomes the useful and used instrument, of Centralization.* While the system of Local Self-Government was in full activity, wars were carried on as bloody, as angry, and as long as any since the Revolution of 1688. *But no National Debt ever grew up.* It was only when, by means direct and indirect, the practical system of Local Self-Government had been fatally shaken, and the interests of one class had been set in antagonism with, and at the direct expense of, those of all the rest, (two events essentially interwoven with one another,) that the *National Debt* was conceived;—a crafty and unprincipled device for tying up posterity from the unfettered exercise of its native skill, resources, and freedom.

Even Blackstone is forced to confess,—and he wrote when the National Debt was almost nominal only, in comparison with its amount, and accompanying consequences, in the 19th century,—that by "the vast acquisition of *personal attachment* arising from the magnitude of the National Debt, *and the manner of levying* those yearly millions that are appropriated to pay the interest, the Crown has, gradually and imperceptibly, gained almost as much in influence as it has, *apparently*, lost in prerogative." †

The Excise and its compeers, children of the National Debt, and sprung all from the stock of Centralization, are but parts and illustrations of that system of *Summary Jurisdiction* which, since the Revolution of 1688, has been ceaselessly rearing up itself in England, to the destruction of that

* Walter Scott's Life of Bage.

† Commentaries, IV., p. 441; and see before, p. 109, from Burke.

only sound system which our fathers so religiously maintained, and which, alone, is consistent with the condition of freemen. The importance of this point requires that it should be treated separately. It is, therefore, but thus mentioned here that the proper relations to it of the Excise, Customs, and other similar systems may not be overlooked.

The Police system which Centralization has succeeded in introducing, deserves the most grave consideration. The Common Law system of Police (to use the foreign word now properly applied to a system so foreign to the Common Law of England) was perfect. It was based upon the idea of mutual responsibility and mutual protection, which is the only principle upon which any Police system can ever be effective. It owed its efficiency to the activity of true Institutions of Local Self-Government. These emasculated, the Police system which depended on them necessarily lost its vigour and reality. That point gained, the next step, as usual, was to get up manufactured evidence to make out a case for centralized control. In due course this was done; and, to pass over other measures of like nature, the foreign centralized system of Police was fastened on the metropolis, as the first step to bringing every corner of the land under the direct surveillance and armed control of the immediate dependents and creatures of the Home Office. Every proof of the failure of the system, as a social and moral instrument, has been only made an excuse for extending it; and, with the usual apathy engendered by Centralization, the public looks on, heavily taxed for the support of a functionary system which does not protect it, but which is capable, at any moment, of being turned to the most terrible uses against every effort and expression of freemen.

A police-ridden nation is a nation of slaves. This contrivance is the most degrading spectacle that modern times, in their refinements upon the machinery of despotism, have produced, in illustration of what men whose souls rise no higher than the most grovelling materialism call "Civilization."

On the Police system more hereafter.

How the Principles and Practice of Local Self-Government have been gradually undermined by various disguised measures, has been thus shown. But . ve direct attacks have been made even upon the existing In. itions of Local Self-Government themselves. It has been seen what the immediate supporters of William III. did in this respect. The example has been worthily followed. Omitting smaller illustrations which have continually happened, the Act called the "Corporations Reform Act" teaches how the ends of Centralization may be accomplished under names and pretences most different. Either the framers and supporters of that Act must have been wholly ignorant of the principles of Local Self-Government and of the Common Law (which is most probable), or, knowing these, that Act must have been designedly framed and supported in order the more effectually to annihilate them. Whether the rights, duties, and responsibilities of the members of Institutions of Local Self-Government are looked at; or the true functions and authority of such Institutions themselves; or, yet again, the character and relations of the Local Representative bodies; or, finally, the solemn assumption, in the first instance, of the condition of an independent Institution of Local Self-Government;—the constitutional Principles, the rules of the Common Law, and the long, ancient, and healthy practice of England, are wholly set at naught by the "Corporations Reform Act;" which, instead, but creates a machinery for local oligarchies, thus to make easier the steps for the still further advances of Centralization.*

The "Poor-Law Amendment Act" is another of the modern strides of Centralization in England. Under the habit which has gradually been so successfully induced, of indifference to public and local duties and responsibilities, comparatively few become acquainted with the working of the monstrous and degrading system which this Act introduced.

* See "Government by Commissions," pp. 336 and following. "Corporation and Freemen," throughout; and see before, pp. 107 and 195.

By those who do know it, language strong enough cannot be found to express the moral degradation and specific mischief that have been induced. Some illustrations of this have already been incidentally mentioned.* It needs only be added that the Poor-Law Board wields powers of the most arbitrary kind, and wielded in the most offensive manner; powers derived partly from pretended Acts of Parliament, but more from encroachments beyond even those Acts; that, under cover of those Acts, it assumes the part of what in an individual would be fraudulent extortion and misappropriation, in respect to the private property of Parishes; that it enforces, and thereby creates, a moral condition of subserviency to its centralized and impertinent interference; destroys independence of consideration and action; hinders improvements; imposes inapplicable and absurd requisitions; and obstructs measures for the general good: while, as in all other cases of Centralization, its cost, drawn from the pockets of the people for the benefit of its own functionaries, is enormous.

Yearly does this system go stealthily creeping on with its usurped powers. Hardly a session passes without some smuggled Act being passed to extend its usurpation. By an Act passed in 1850 any little independence which was left to Vestries is sought to be finally annihilated. Besides other contrivances for this purpose, it contains one set of such contrivances that, but for the modern plan of smuggling Acts of Parliament, could hardly have passed even through a House of Commons, so flagrantly do they violate every principle of Common Law, common sense, and common honesty. It is expressly provided that the Vestry Clerk shall be the mere tool of the Poor-Law Board, only removable by their consent, his salary to be fixed by them (not by the parish which pays it), and his duties to be such as the Board shall require!

Later Acts than even the Poor-Law Amendment Act have sought to bring all Local Districts, with reference to all remaining matters, under Centralized Control. A machinery is

* Before, p. 61.

contrived, by which Crown-appointed Inspectors are sent down to every place seeking to do any work of self-improvement; which Crown-Inspectors have the mission of getting up *ex parte* Reports. The great end is, by means of these Reports, to make out cases for centralized control; for the enforcement of procrustean schemes; and for the increase of functionarism. By a mere accident* one instance of the application of these devices became exposed in 1850, earlier than most of the evil works of Centralization. The suppression of evidence deliberately practiced; the impertinent presumption of incapable but favour-appointed functionaries, in pronouncing on the plans of the most accomplished engineers; the vexation, harasssment, and cost; all which, with many others, are the necessary fruits of these devices; were proved before a Committee of the House of Commons.† It were well that those exposures should be widely studied.

Of this class of devices a striking example is afforded by the (so-called) "Public Health Act" of 1848. This was, beyond question, a more extensive and blow than had, up to the time of its passing, been given in England, to the Principles and Practice of Local Government. No scheme more demoralizing and mischievous, in every respect, was ever introduced by the enemies of human freedom and progress, under false pretences and by means of the "cunning artifice of words." The object and effects of that Act are, to reduce all places into a state of abject subjection and subserviency; to impose upon them enormous and increasing burthens which shall completely tie up their hands; to fasten a horde of functionaries upon the land; and to loosen all the foundations of Law and Property. To carry out results so desirable to the friends of Centralization, small cliques, whose subserviency is ensured, are erected in each place. In the

* See before, p. 159. Preliminary Inquiries, 1850; especially Evidence, pp. 48 & 49, 54, 55, and see "Government by Commissions," predicting all thus proved, pp. 229—234.

† See Report and Evidence of Committee on Local Acts

formation of these cliques almost every disguise is thrown away. Of Representation, Election, or Responsibility, there is not a shadow.*

As usual with functionaries under Centralization, even the powers pretended to be given by the Public Health Act were, immediately after the Act had passed, boldly encroached far beyond; and thousands of pounds were expended, and authority pompously asserted, for which that Act afforded no trace of warrant. But, as usual, the cost and vexation of resistance in the Courts of Law, were relied on as the effectual helpers and supports to these encroachments. Every nerve, moreover, was strained, from the moment the Act came into force, to get up, by manufactured evidence, cases by which the unlawful and arbitrary powers the Act gave should be yet further extended. No Body has ever existed under the system of Centralization which has so systematically and so unscrupulously acted on, and carried out, the maxims already enumerated,† as has the Board of Health.

The Public [illegible] was obtained by means of a Panic artfully encouraged [illegible] carefully cherished, and by means of disguising and mystifying, in every possible way, the true objects of the Act itself, and the intentions of its authors. The latter thus succeeded "by cunning artifice of words," in "utterly deceiving" the public, and securing their own ends. Another Act of a very similar nature was got to be nominally passed in the same session. The Metropolitan Sewers Act, 1848, passed the House of Commons when 35 members (out of 658) were present! This Act completely overturned the entire system of the old Law of Sewers; and set openly at defiance every form, even, of Responsibility, and every one of the guarantees provided by the Common Law for the security of person, property, enterprise, and moral independence.

In all these cases, and all the numberless other like cases that might be added, a practically unlimited control over taxation, as well as administration, is given to Crown-nomi-

* See before, p. 159. † Chapter XII., p. 182, &c.

nated, arbitrary, irresponsible, secret Boards. In every case, without exception, the cost of management is enormously increased by inefficiently and mischievously pretending to do, through the instruments of Centralization and Functionarism, that which would, at a very much less cost, be really and efficiently done under the system of Local Administration and Local Responsibility.

While immense powers are thus entrusted to all these Boards, affecting the weal or woe of every individual in the community, affecting taxation to an enormous amount, affecting all our most valuable institutions, the members of the Boards, and their emissaries,—accusers and judges themselves in every case,—remain utterly irresponsible. Nominated by the Crown, and not, as could be the only legal and justifiable course (though, even so, full of mischief), by the nation, or by the parts affected, they neither acknowledge, nor have, any responsibility to the nation or to any parts of it. The annual "reports" which some of them lay before Parliament are mere matters of form, even were purely *ex parte* statements, as such must always be, worthy of any confidence. How the ostensible government of the day evades its legal responsibility by means of these Boards has been already pointed out.* Thus is Responsibility shifted off every shoulder, and the fundamental laws and institutions of the land are daily violated with entire impunity: while place and patronage are on the rapid increase; jobbing [illegible] in open vigour; and Centralization is spreading far and wide, and farther and wider, its ever fatal influence.

The indomitable energies of the people of England have enabled them to struggle against disadvantages of the heaviest weight. Channels have been continually found in which those energies have, for a time, been enabled to exert themselves, despite the spread of a system which has been shown to fetter down and blight everything it touches. But never, of late years, has any one of these channels been

* Before, p. 108.

opened long, before the chilling finger of this system has been laid upon it. The numerous Excise Acts, the Ten Hours Act, the Public Health Act, the Buildings Acts, and numberless similar contrivances, are but illustrations of this unhappy truth. They are trammels contrived to bind down skill and enterprise, and all self-depending energies; and which are daily binding them down harder.

The instances that have been mentioned are but a very few of the practical forms which Centralization has assumed in England; all within less than the last 200 years, and since James II. began to imitate the example of his brother of France. The contemplation of the story is too humiliating to be dwelt on without the utmost feeling of shame and indignation. It is to be hoped that future history may tell,—not that, from the middle of the nineteenth century, Centralization went on, fastening still deeper her hateful and degrading fetters,—but that, about that time, the eyes of the people began to be opened; the sense of moral independence and self-respect to be roused; the principles of the Common Law to be remembered; the long, active assertion of the rights, duties, and responsibilities of freemen by our fathers, to be felt as a bitter rebuke to an age lost in selfish materialism; Magna Charta and the Petition of Right, and the oft-repeated declarations of both these, to be studied; the judgments on the Courts of Star Chamber and of High Commission, and the grounds of those judgments, to be repeated in the cases of the numberless courts of like nature which have been since as unlawfully erected,—but which latter are far more mischievous and dangerous than those Courts were, because far more wide-spread in their operation. Thus will the whole fabric of Centralization be made to totter to its fall; and the system of Free Institutions embodied in the practice of true Local Self-Government be restored to its lawful place and full efficiency.

CHAPTER XV.

PRACTICAL FORMS OF TRUE LOCAL SELF-GOVERNMENT.

HUGH PETERS was a wise man in his day and generation when he proposed the burning of all the Old Records of England.* Such would be a great boon to the enemies of human freedom. It would greatly help the ends of all centralizers if no records existed by which it could be shown that men are capable of Local Self-Government.

It should never be forgotten that, however well it may suit platform oratory to declaim on the Rights of Man, such phrases, and all the ideas that are attached to them, are wholly without any real meaning.† The horse would remain a very useless animal if all known of him were the theories that Physiologists might be content to utter as to what use he might or might not be put to. It is by learning what he has done, when properly tried, that his capabilities, and the proper use of him, are learned. And Man is also a creature whose capabilities, and the proper use of him, can only be learned by the very careful study of his natural history. If it could be shown that mankind had, through all ages, been in a state of subjection to one or a few (no matter how their position was obtained) all the abstract reasoning in the world, and all the loudest proclamation of the Rights of Man, could never prove or make men capable of freedom,

* Good Work for a good Magistrate, 1651. p. 96. See it cited by Prynne, in Introduction to the 1st Vol. of his Parliamentary Writs.

† See before, p. 13.

with its rights and its responsibilities. The mode of mere declamation is, of course, always the easiest. It is the mode of the empirical alchymist, in contradistinction to that of the inductive chemist. And the results, too, are analogous. The empirical system, exploded in science, still flourishes in Politics; and, until it has been exploded there too, the political regeneration of Europe is a thing not to be hoped for.

Man is a creature acted upon by motives, and acting by impulses and desires, which must remain the same in kind so long as man exists. Nothing can, then, be so all-important to those who would take any part, directly or indirectly, in the improvement of the condition of their fellow men, whether politically or socially, as a familiar knowledge of the nature and mode of action of human motives and human impulses and desires. To all who pant for human progress, and aspire to see man's highest nature fully developed; every lesson that can be gathered of how that nature has, at any time or under any circumstances, been developed, is helpful and instructive. Such lessons must always be the guide of the really practical man in the bestowal of his own efforts, at this day, towards the giving scope to the highest action of that human nature which exists the same to day as it did two thousand years ago. Such is the only sound, experimental, inductive method by which, in politics and social philosophy, as in all other things, safe generalizations can ever be reached. It is upon such a method that the whole of the present truth-felt maintenance of the System of Local Self-Government is founded.

Happily, the means of this study are afforded in respect to the Anglo-Saxon branch of the Human Family more completely than in respect to the inhabitants of any other country of the world, ancient or modern. The records we have, read with remembrance of those axioms which must always guide the truth-seeker, are invaluable. When the natural tendency of power to seek to extend itself is considered, and the many strong-minded men that have held power in England from time to

time are remembered, it is a truly marvellous spectacle to see how, for ages, the fundamental principles of freedom, and the ennobling maxims and practice of social and political duty and responsibility, have been upheld in England. Instead of being startled at evidences that the advantages of places of power have sometimes been used successfully, for a time, to make men forget their duties and responsibilities, and that usurpation has been, sometimes, for a while effected, the marvel is, how, for century after century, free men knew so well, and so well maintained, their rights, duties, and responsibilities against encroachment. Nor is it at all difficult to trace how it happened that, since the Revolution of 1688, a different spirit has so fatally shown itself. For this last inquiry, however, this would be an unfitting place. The present purpose is, with the greatest brevity, to direct attention to the practical shapes in which Local Self-Government has, heretofore, developed itself, and existed in full activity in England, as the best guide to the consideration of what kinds of such Institutions are now practically available, and the most likely to afford the practical realization of true Free Institutions. Names, artificial divisions, and formularies, are of little value. What modes and forms precisely suit one age may not precisely suit another. But it is with realities and not with names and artificial divisions and formularies that we have now to do; any of these latter to which it may be useful to refer being employed but as vehicles to convey, the most readily, the idea of the truth and reality which they once at least embodied.*

* Hallam says, in speaking of the early English Constitution, that "no where have I been able to discover any trace of Municipal Self-Government." Though afterwards qualified with exceptions,—which, if they were exceptions, would be a truly incomprehensible anomaly,—this is left as his latest view (Mid. Ages, ed. 1846, vol. ii., p. 153, note). It is indeed marvellous that any man can have really paid any attention to the Constitution of this country and make such a statement; and nothing can more completely prove, than such a statement, the warping which history has undergone by the dissemination of certain theories. The entire ground-work of every English Insti-

No name was ever devised which more fully expressed a reality than the word *Folk-Mote*:—discussion by the assembled people.*

Throughout the Anglo-Saxon laws, and long after the coming of William the First, we find continual allusion, by name, to the *Folk-Mote*. It was held sacred and inviolable.† It was the duty of every man, and enforced by penalties, to attend his proper folk-mote, in order to discharge there the duties and responsibilities that attached to him as a member of the State.

The folk-mote met, unsummoned, at fixed and frequent times, though the duty devolved upon the respective ministerial officers, of giving notice of it, in order to prevent accidental forgetfulness.‡ Hence the practice of the summons for Parliament being issued by the Crown, in the discharge of its ministerial functions. But the caprice and neglect of the officer could not avail to deprive the freemen of their right of folk-mote, nor to obstruct the discharge of the co-extensive duty.

There was, till of late, no such anomaly as a ratepaying test. It did not enter into the minds of our fathers to ordain that, because a man did not fulfil one duty, he should be excused from the fulfilment of others. They held, on the other hand, that, every man being a member of the special community in which his lot is cast, he owes duties to the community which, if he would claim to be a freeman, he is bound to discharge, and which the Community must see that he does discharge. Whether ratepaying should be one of these is quite

tution is what it has been the modern fashion to call (very incorrectly), "Municipal Self-Government." It is impossible to turn over any of the ancient records,—whether the Anglo Saxon Laws, Domesday Book, or any others thence downwards,—without finding the evidences of this staring the inquirer in the face so strongly that, by nothing but the warping influence of the old and meaningless pedantry about the three forms of government, could it be helped being seen and recognized.

* Anglo-Saxon:—*Folk*, the same as still in use;—*motian, to come together for discussion.*

† See the quotations in "Government by Commissions," p. 51, note.

‡ See before, p. 83.

another question. It is, at any rate, an obligation which must *follow* and not *lead*. Ratebooks and Ratepaying must clearly, under any sound system, be a result, and not the foundation, of the Roll of freemen.

Before proceeding to consider the different kinds of practical folk-motes, it will be desirable to direct attention well to the nature of what are now called "public meetings,"—as distinguished from Vestries, Wardmotes, and other still existing forms of Folk-Mote; that the entire difference between these and the true *Folk-Mote* may be understood, and so the practical value and importance of the latter rightly seen.

On all and any subjects of public interest, either to the nation at large or to any local district, public meetings have always been in the habit of being held. And the practice of this inherent right,—though oftentimes attempted to be interfered with, limited, and shackled,—has happily been maintained, with little successful permanent infringement, to the present hour. Essential, however, as is this right, and unquestionable as is the importance of its jealous maintenance, the very statement of its nature shows how imperfect it must always be as a *substitute* for the practical working of Institutions of true Local Self-Government; which is what, in point of fact, it has, in and since the 18th century, become in this country. In cases of sudden emergency, or of a special nature, and of certain and universal interest, such public meetings may have an effect analogous to that of those Institutions. But such cases are, necessarily, of rare occurrence. On the other hand, circumstances of as real, though not so exciting, an interest to individuals, the district, and the public, are of daily occurrence; and, for these to be dealt with well and lawfully and usefully, the careful consideration of them by the public, and the well-considered expression of public opinion upon them, are equally necessary as in matters like the former. But, unless a recognized and habitual organization and machinery exist, that public opinion has no opportunity of being so expressed. In the cases of esta-

blished and regular Institutions of Local Self-Government, the organization and machinery exist permanently, and always ready, for having any and every subject brought, by any one, under notice and discussion, and for carrying out, in a lawful and regular way, the opinions expressed upon it. To call together an incidental public meeting on any given subject requires, on the contrary, a special, and, what is important, a *one-sided* effort. Besides the want of impartiality and freedom of discussion, which are so essential, but thus prevented, this effort always falls on some one or two individuals. Such individuals, besides the unfairness of having to bear the exclusive burthen, in more ways than one, are always liable to the charge from their opponents (and unless there be opposition there is no freedom of discussion and little hope of truth) of being busy-bodies and of putting themselves forward. Many will be ready to take an active and valuable part in a discussion, who are not able or willing, and justifiably not willing, to incur this burthen and these insinuations. Again; such a public meeting being merely incidental, and no regular machinery existing of which it forms a part, the greatest danger is always run of the resolutions adopted not being fully and effectively carried out. There is no one who has the authority, and the duty, necessary to ensure this. Further: such meetings being merely incidental and occasional, there cannot exist that *habit of discussion*,—supposing them to be ever really impartial, instead of always practically one-sided,—which is so all-important to the arrival at just conclusions, and, therefore, to the giving weight to such conclusions. Platform Oratory is thus bred by them, and always characterizes them, instead of open and equal deliberation and discussion. They necessarily yield, as a general rule, mere unreasoned *Confirmations* of something cut and dried beforehand, instead of giving the sound result of deliberation and discussion. And, however important sound and understood *Confirmations* must always be, as expressing the general sense of large masses of the people, meetings like these can never have the value, either as true and free expressions of popular

opinion, or as means to the healthy development of individual energy of thought and independence of character, that must attach to Folk-motes which, duly taking place in regular and ordinary course, have, after full discussion, resulted in the expression of the free opinions of the *majority* of an assembly in which the *minority* have had exactly the same opportunity of expressing their opinions.

These considerations, and others which might be added, conclusively show that the mere exercise of the right of public meeting on special occasions can never, in any efficient or practical degree, supply a substitute for those institutions of Local Self-Government under which true Folk-motes take place, from time to time, in frequent and regular course, and *as matters of course;* at which Folk-motes all and any subjects can, at any time, be brought under discussion by any persons; are fully discussed; and—having been discussed—the result of that discussion is carried out by an organized and regular machinery. And, while the right of special public meeting ought never to be abandoned, the efficiency, and therefore the weight, of even those special meetings the necessity of which will always sometimes occur, will, it is obvious, be very greatly increased by the vital and constant activity of the regular Folk-mote.

Coming now to the several practical *species* of which the Folk-mote is the *genus*, the clearest idea will probably, at the outset, be given of what these, and their relative purposes, have been or are, by a few quotations from records of unquestionable truthfulness.

"Each reeve [of a hundred] shall have a Gemote always once in four weeks; and so do, that every man be worth folk-right."*

"Let them [the Hundred-motes] meet always within four weeks."†

"And let the hundred-gemote be sought as before said:

* Laws of Edward the Elder, A.D. 901.

† Laws of Edgar, A.D. 959.

and thrice in the year let a Borough-gemote be had, and twice a shire-gemote."*

"Let every man seek the Hundred-gemote, under penalty, even as it is right to seek it." †

"The Shire-mote and the Borough-mote twice, and the hundred-mote and the Wapentake twelve times in the year should meet, and have a six-days' summons;—*unless public need calls for an earlier meeting.*" ‡

"And the hundred should meet every month, that is, twelve times a year; the shire, twice; *unless there is oftener need.*" §

"I enjoin that Shire-motes and Hundred-motes be held in those places and at those times that they were in the time of King Edward [the Confessor]; and not otherwise.

"And I enjoin that *all the men of your shire* go to the Shire-motes and Hundred-motes, as they did in the time of King Edward," under penalty of being put out of the King's peace; that is, of being outlawed. ‖

With which agree, strikingly, the Law and custom as recorded by Tacitus seventeen hundred years ago:—"They meet, unless something unforeseen and sudden fall out, on fixed days, at either new or full moon." ¶

"That we count always ten men together; and the eldest [elder-man, chief] look to the nine as to all those proceedings which *we have all ordained;* ** and afterwards [tell] their hundreds together, and one hundred-man [as chief] who shall remind the ten as to the *common* need of us all. And these eleven shall hold the money of the hundred; and judge what they shall spend when any one shall be to pay, and what they,

* Laws of Edgar, A.D. 959. † Laws of Cnut, 1017.

‡ Laws of Henry I., 1100. § Ib.

‖ Writ of Henry I. to the Bishop, Sheriff, and Men of Worcestershire, A.D. 1108.

¶ Germania, § xi.

** See before, p. 81. It will be seen that the functions of this true Representative Body were *Administrative* only, and not *Legislative.*

again, shall take if money arise to us at our common claim. And let them know, too, that each due be forthcoming of *those which we have all ordained* to the common need of us all, under penalty of thirty pennies or one ox: so that all be done that we in our ordinances have ordained, and that stands in our agreement.

"That we gather together to us always once every month, if we can and have free time, the hundred-men and those who look to the tythings, * * * and know what of our ordinance has been fulfilled" * *

"The King (Henry III., A.D. 1259) came to Paul's Cross, the innumerable people of the city being gathered together in *Folk-mote*, and there had leave given him by the people to go oversea:" [the same several times repeated].†

"The King, wishing to know the truth, caused a *Folk-mote* to be summoned for the following Sunday.

"And all the aldermen were bidden to summon, early on the morrow morning, their *Ward-motes*.

"The King, dissatisfied, bade the sheriffs to summon, on the morrow, a *Folk-mote* at Paul's Cross; whereto he sent John Mansel and others, *to ask of the commonalty if such was the custom*."‡

"Because we have heard that you and your bailiffs and other bailiffs who hold hundreds in your shire do not understand how often Hundred-motes and Wapentake ought to be held in your shire, according to the great charter confirmed in our minority:—We have caused the said charter to be read again in presence of our Great Council; and the following clause in it to be expounded *before them and by them* [coram eis et per eos]:—'that no sheriff nor bailiff shall make his TOURN§ in his hundreds but twice a year, and always in the

* Judicia Civitatis Lundoniæ Temp. Æthelstan, A.D. 925.

† Liber de Antiquis Legibus: quoted at considerable length in "Corporation and Freemen," p. 13, &c.

‡ Ib., pp. 14 & 16.

§ The *Tourn* corresponds to the biennial Shire-mote so often enjoined through the A.-S. Laws, as quoted above; in all which more frequent hundred-motes are also named.

accustomed place.' Many declared that, in the time of Henry our grandfather [Henry II.], as well Hundred-motes and Wapentakes as Leets of Lords were used to be held twice a month. And whereas we greatly long to provide for the common good of the whole kingdom, and for the protection of the poor; but the two Tourns above said cannot suffice for maintaining the peace of the land and for correcting the excesses as well of the poor as of the rich which pertain to the jurisdiction of every hundred;—be it ordained, by our Common Council aforesaid, of the *Bishops, Lords, and Others*, that, between the said two tourns, there shall be held, as well Hundred-motes and Wapentakes, as Leets of Lords, once every three weeks, where before they have been held fortnightly. Yet so that there need not be a general summons made to these Hundred-motes and Wapentakes, as there is to the said Tourns; but to these Hundred-motes and Wapentakes all shall come who seek justice, and those against whom they complain, and those who owe suit, *by whom the causes shall be tried and the judgments made*; unless there be any inquiry touching criminal matters [&c.], to make which four shall come from every next vill [to be sworn to the inquiry], as well as all others of those vills who may be needed to make a true inquiry."*

Thus while the General Shire-Motes, or "Sheriffs' Tourns," remained, also, frequent. They might, and did, vary, as the needs of the folk and people required, from fortnightly to monthly or three-weekly. They were even held, where needed, weekly, as in the City of London.† But the idea and practice remained the same—of bringing the means of the speedy and easy settlement of every matter

* 18 Henry III., A.D. 1234. It is an extraordinary thing that this, certainly one of the most important statutes in every respect that ever was passed, is neither found in the folio Edition of the Statutes published by the Record Commission, nor, as far as I can find, elsewhere among their publications.

† Ancient Laws and Institutes, vol. i., p. 503.

in question home to every man. To pass over the many other descending illustrations, in point of time, which might be given, it will be enough to quote one other statute, as late as Edward VI.'s time, in which the same monthly holding of these Hundred-motes, just as declared by Tacitus fourteen centuries before, is re-declared. They are called in this statute, "County-Courts;" but the thing, and the function of it, and the suitors to it, remain practically the same.

"Whereas, heretofore, [for] the most part, in all the shires and counties within this realm, the County Court is and hath been usually kept and holden from month to month, and so at every month's end one county; yet albeit in some countries [counties] though not many, the said county courts are holden from six weeks to six weeks;" * be it enacted, "that no county court or courts hereafter to be kept within this realm shall be longer deferred but one month from court to court; and so the said courts from henceforth shall be kept every month, and none otherwise." †

Which last is still the law.

From these quotations, which might have been indefinitely extended, it will have been gathered that there have been, from a very remote time, and as distinct things, Folk-motes of Shires, Cities, Boroughs, Hundreds, Wards, and Tythings, frequent, fixed, regular, and accessible. Tourns, Leets, Courts Baron, Precincts, and Parishes, may be added. Each of these last has also its peculiar Folk-Mote.

To enter into curious inquiries as to the origin, or special constitution, of Shires, Cities, Boroughs, Hundreds, Wards, Tythings, Precincts, or Parishes, is quite beyond the present scope. However valuable and interesting such inquiries may be, they are not necessary to the present point,—which is, to realize the clear and unmistakeable fact that there has existed in England, for untold ages, a system of Local Self-Govern-

* This seems a remnant of the practice under the statute of Henry III.; six weeks being an adjournment of each alternate tri-weekly hundred-mote, where not needed so often.

† 2 & 3 Edw. VI., c. 25, A.D. 1548.

ment, minutely ramified, and wisely devised so that there should be fixed, frequent, regular, and accessible meetings together of the Folk and People, in every part, for the common purposes of getting justice nigh at hand, and of dealing it,* and also of understanding, discussing, and determining upon, all matters of common interest. Spelman well puts it:† "Let all the hundredors go to the Hundred-mote; both all suitors [i. e., members of the hundred, owing service at the Folk-mote], and all seekers; *these* that they may get justice, *those* that they may deal it;‡—ALL *that they may understand what things have regard to peace and to the public welfare.*" It is sufficiently remarkable that the substantive words Spelman here uses to express the functions and duties of the Hundred-mote, are the same as those in which he describes the functions and duties of the Witenagemote, or National Assembly,§ with the single and obvious addition of the words "and war" after "peace" in the latter. In Spelman's day the true functions of the Hundred-Motes were not forgotten, as they unhappily now are.

The great object and practical result are, then, the arrangement of means by which the freemen may meet frequently, and without difficulty or needless loss of time, to *discuss, order, and administer*, all those things which concern them in their Common Relations. Divisions are made by which, without inconvenience, this can be done at least once a month, and as often more as need shall be. These are grouped together in larger divisions, where, less often but

* See the statute of Henry III. already quoted. The true end was seen by all real students to be "that the subject might have remedy and justice at his own door." (Coke, 4 Inst. 265.) "As the Leet was derived out of the Tourn *for the ease of the people*, so this Court of the Hundred, *for the same cause*, was derived out of the Court of the County." (Ib. 267.) "*Comitatus*, ubi *celerior* litis habetur determinatio *quam in banco*," says the Chief Justiciary of Edward I. *Hengham Magna*, Ed. 1616, p. 12.

† Spelman's Glossary, p. 303.

‡ See the terms of the statute of Henry III. before, p. 220.

§ Ib., p. 261.

still regularly, they shall meet for consideration of the common interests of such wider districts; and to these latter Folk-motes they will, in consequence of the frequent and regular smaller ones, where all matters have been already discussed, go up well prepared to despatch business without idly wasting time.

Each division is a distinct associated body in itself, having its own rights of free Self-Government;—the wider districts being for the common interests that grow out of the grouping. Even hundreds had formerly Common Seals;—which had around them the name of the county, across them that of the hundred,* a device carrying a good deal of significance.

The Wards of Cities and Boroughs answer to the hundreds of Shires; precincts to tythings.

As to Parishes, it is satisfactory,—considering the tendency of Poor Law Usurpation,† judge-made law, and priestly assumption, of late years,—to find it asserted by the most eminent judges of the last century, that "parishes were instituted for the ease and benefit of the people, and not for the parson;"‡ and that, of "common right, in every Vestry, the whole assembly are upon an equal foot;" and that no power of adjournment or otherwise is in the Rector or Vicar, though he be allowed to fill the chair; "for that would be giving him too much influence."§

Mention has been seen to be made in the statute of Hen. III. above quoted of the "Leets of Lords." They are therein declared to stand on the same footing as Hundred-motes. This is a matter of much importance to be well understood. So thoroughly imbued has the whole spirit of the Institutions of this country always been with the principles of Local Self-Government, that the existence of the

* See Close Rolls, 14 Rich. II., Mem. 13.

† See before, p. 206.

‡ 3 Salkeld's Reports, pp. 88, 89.

§ Houghton *v.* Reynolds, Strange's Reports, p. 1045.

relations of Homage* made no difference in the *fact* of Local Self-Government,—only in the particular form under which it should be exercised. Whether in homage, or simply as freeholders, men met together to judge and be judged among themselves; † and themselves to discuss and determine all matters of common interest. If as simple freeholders,—they went up together to the Shire-mote and the Hundred-mote, the Borough-mote and the Ward-mote, where their occupancy was; and where they met under the presidency of the head ministerial officer: if as homagers,—instead of going to the Shire-mote or the Hundred-mote; they went up together, according to their occupancy, to the Leet‡ of him to whom they stood in the voluntary and mutual relation of homage; and who himself went up as their authorized representative, and as responsible for them, to the Shire-mote and to the Great Council of the Realm. But, in each case alike, the "suitors" were, and are still, the men themselves; they dealt and had justice among each other; and had thrown upon themselves the many and ennobling duties and responsibilities of Local Self-Government. One man, a tenant in different places, might be under both conditions; belonging to the Leet of the Lord in respect of a holding, and at the same time to the Borough-mote, for instance, of the borough where he dwelt. On loss or decay of the Lord's Leet,—as, for instance, by the old borough of Sarum, composed of homagers, becoming a homeless hillock,—the important principle of the Common Law is, that the jurisdiction returns again to the hundred and the shire, and does not remain an empty mockery, as the worshipper of names and forms would

* See before, p. 93.

† See Jentleman's Case, 6 Coke's Reports, p. 11.

‡ The term "*Leet*," which is generic, is as correctly to be applied to the Sheriffs' courts of the unhomaged men, where law is done, as to the narrower limits of courts of homagers. But it has long got to be used, conventionally, in reference, principally, to the latter; and therefore is so used here—with the *caveat* of this note in order to prevent any misapprehension.

have it. And if the Lord's Leet neglected its jurisdiction, the Sheriff's Tourn might take cognizance of it, so that no defect of justice should arise.*

The Rolls of Parliament contain numberless illustrations of the erection of separate Leets, or special jurisdictions of Local Self-Government:—and, again, of separate Leets, too hastily formed or without the true characteristics which the Common Law requires, being merged back into the hundreds and the shires of which they had, at the first, been parts.† Many large cities had that entireness of separate jurisdiction that they went not up at all, either as unhomaged freemen, or by their representative Lord, to the Shire-mote. Then were they recognized as shires within themselves, and, as a consequence, chose, and still choose, their own independent Sheriffs. All these are only the different, but highly instructive, practical modes by which thorough and effective Local Self-Government has been and may be carried out.

It may be well to glance, a little more fully, at the powers and functions of these Institutions of Local Self-Government. Some leading points, applicable to all, shall be touched on, without entering into any minute detail.

It was the first duty of every one of these Institutions of Local Self-Government,—each of which was held, most wholesomely, responsible for every one of its members,—*to keep its own roll perfect.* The members, whether homagers or unhomaged, never dreamed of that badge of servitude which consists in admitting any others, set over them by external authority, to determine who was, or was not, properly of their number. No "Revising Barrister" could interfere to adjudge that which is, and ever must be, within the cognizance of freemen only, and only to be adjudged by them.‡ If a man's free-

* See Glanville De Legibus, Lib. I., cap. 1 & 4; Hengham Magna, p. 10: and see Coke, 4 Inst. 261; also Ib., 267, second paragraph.

† See Coke, 4 Inst. 267.

‡ See before, p. 199. On a point of this practical interest and importance, it will be valuable to place on record the following communication from my accomplished friend, the Envoy from Kossuth's Govern-

dom-ship, his right to membership, to be on the roll, was doubted, he was bound to prove it before the Folk-mote. The "view of *frankpledge*,"—that is, enrolling all men in the bond of mutual "*peace-pledge*,"—was one principal object of the Sheriff's biennial Tourn. By this was the roll made and kept

ment to this country. It is here published with the writer's permission. It was written in reply to a question put by myself to that gentleman after I had published (see "Corporation and Freemen," p. 39) what the Constitutional course of the Common Law of England is on this matter. It is remarkable to see how the Law and Practice in Hungary agree here, as in so many other points (see "Parallels between England and Hungary" throughout) with those of England. This cannot be accidental. It seems to me that the long residence of the sons of Edmund Ironside in Hungary (about A.D. 1020—1050), one of whom married a daughter of Saint Stephen, the great Hungarian King, has had no indirect connection with this remarkable likeness.

"17 March, 1850.

"My dear Sir—In case of elections, the list of electors (before 1848) was made by a Committee appointed by the Congregation.[a] Everybody had the right to object to any name, or to claim the insertion of another. The Committee decided the question, and made a report to the general Congregation, where the list was read, and the objections *finally* decided as to the next election.

"If somebody proved that he was '*in usu nobilitatis*,' by having voted in the last elections, he could not be disfranchised, even if the objection against him was of the most important nature; but the attorney of the county was directed to begin, *after the election*, a lawsuit against the man whose franchise was attacked,—and to prove that he was not entitled to it.[b] This lawsuit was carried before the judicial quarter-sessions (*Sedes Judiciaria*): and, after being decided, the appeal went to the '*Consilium Regium Locum-tenentiale Hungaricum*,'—the Home Ministry. During the lawsuit the defendant was reported in the list of Electors under the head '*dubiæ nobilitatis*,' but could not be disfranchised till his sentence was given;—he voted as elector notwithstanding the pending lawsuit.

"If he proved that he was of noble birth, and that his right was firm, the man who challenged him was fined £10. If he could not prove his

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[a] Exactly as required, by the Law and Custom of the City of London, to be done by the different *Ward-Inquests*.

[b] Note well, that the *onus probandi* was on the *attacker*, not on the *asserter*, of the franchise.

perfect of all the men within the jurisdiction who had mutual duties and responsibilities. Nothing can be more truly practical or more important,—always remembering the reality and substance, and not losing sight of these under mere antiquated (however once expressive) forms. The hundreds being merely for accommodation and convenience, it was before the Shire-mote, or, at least, before the head officer of the shire, that the hundredors gave pledge for the fulfilment of their obligations.*

What effective securities against both ministerial encroachments and local oligarchism are afforded by such true Institutions of Local Self-Government as have been described, might be illustrated by numberless examples. An illustration has already been given of how the King could not go abroad without, first, asking leave at a full Folk-mote. The same record that supplies that illustration, supplies many instances of the triumph of the Folk-mote over all the subtle arts alike of oligarchs undisguised and of oligarchs under the disguise of demagogues.†

How law was made in these Folk-motes has been already mentioned.‡ It is the inherent right of every Institution of Local Self-Government to make all the Law that is to be for its own use,—never infringing, in so doing, upon what is of

nobility, he was struck out from the list of Voters, but he was entitled to prove his nobility at any other time.

"The first judge was naturally the *Folk-mote*. This decided if there is the case of the law-suit. It was a kind of Grand Jury. The second judge was the *Sedes Judiciaria*, which is your *Jury*. The appeal to the board of home affairs was necessary, as the King must know the condition of his subjects. This was not much more than a formality.

"Yours sincerely,

"Toulmin Smith, Esq." "F. Pulszky."

* It was even declared that the execution of writs was to be "by hundredors sworn in full Shire-mote." Rolls of Parliament, 8 & 9 Edw. II., Petit. No. 23; and see Glanville De Legibus, Lib. I., cap. 9.

† See "Corporation and Freemen" throughout. The facts and illustrations there brought together are of the highest interest and most important bearing.

‡ See before, p. 117.

wider application and adjudged by the more extended Institutions of Local Self-Government, or, if it concern the realm, by the Common Council of the whole realm.* It is even within each separate body to determine its own bounds. This is expressly recorded, in the most emphatic and illustrative way.† Upon the same principle any hundred could separate from itself any tythings which wrongfully claimed to be part of it, if so found by the hundred-men.‡

A remarkable instance may be mentioned of how the Shiremotes made the Law for themselves, and helped the making of it for the whole realm, by the lawful opportunity they gave for discussing public interests and expressing opinion upon them. The events cannot be better told than in the expressive language of Lord Coke.

Edward the First was one of the most powerful and warlike Kings that ever sat on the English throne. Active and energetic at home, and delighting in warlike exploits abroad to an extent which, had Centralization then existed, would long ago have swamped this nation beneath the load of a National Debt, he found the Institutions of Local Self-Government too strong for him. They effectually kept in check encroachments at home, and, as effectually, checked his warlike propensities abroad.

"There were two causes," says Coke,§ "of the making of this Act [*De Tallagio non concedendo*—the non-grant of taxes]; the first was" a requisition of the King to some of his barons and others to follow him in arms to Normandy, or contribute money aids thereto. "Which the constable and marshal, and *many* of the nobility and of the knights and esquires, and *all* the freeholders, vehemently *denied*, unless it were so ordained and determined by common consent of Parliament."

Here, then, it was the freeholders who resisted. The no-

* See before, pp. 101, 102.
† See "Corporation and Freemen," p. 26.
‡ See Domesday Book, 165 (*b*) & 209 (*b*).
§ 2 Inst. 532.

bility was less staunch: there were *many* of them; but *all* the freeholders resisted the demand. Though Parliament was not sitting, the Shire-motes and Hundred-motes were held in regular course; and there the will of the freeholders found lawful utterance; and the King's requisition was refused.

"The second cause was that the King the year before had taken a talliage of all cities, boroughs, and towns without assent of Parliament; whereupon grew great murmuring and discontentment among the commons. For pacifying of which discord between the King and his nobles, and for the quieting of the commons, and for a perpetual and a constant Law for ever after, both in this and other like cases, this act was made;" which is, in fact, but a re-declaration of the same fundamental law as declared by William the First,* and which was ever the Common Law of the land.

It is to the Folk-motes, then, regular, fixed, frequent, and accessible, that we owe these re-declarations, and the enforcements of them.

Making judgment,—or, as the old and most expressive phrase was, "doing *folk-right*,"—was another of the inherent functions of all the Institutions of Local Self-Government. The smaller ones despatched lesser matters; the larger ones, as the Shire-motes, greater ones and matters of appeal. Many and highly characteristic illustrations might be given; but details must be forborne. Folk-right was done speedily,—for the Folk-motes were frequent; easily,—for the Folk-motes were at hand; and without cost,—for the freemen themselves were the judges, it being one of the highest and noblest of their functions to do folk-right [illegible] each other, without fee or reward. The modern Jury system, so little understood, is the remains of this, as will be shown hereafter; remains which many are ignorantly attacking, but which every lover of freedom will cling to as the living corner-stone of the noble edifice which he hopes to see restored in all its original strength and practical vitality.

Self-taxation is another inherent right of all Institutions

* See "Government by Commissions," p. 65.

of Local Self-Government. It is part and parcel of, and a necessary incident to, the inherent right, already touched on, of making bye-laws (laws of the "*bye*," * or *dweller's union*).†

The Institutions of Local Self-Government are the medium through which alone all matters can be lawfully inquired into. And this is one of their most useful functions, immediately connected with those others of discussion, deliberation, making Laws, and administering them, as already noticed. This point will have to be touched upon again. It shall only, therefore, be now mentioned that the power of the Hundred-motes to inquire into the conduct of the Sheriffs of the Shires is expressly recognized;‡ which applies equally to Aldermen of Wards,§ &c.; and, rising higher, but upon the same principle, to the crown itself by Parliament.

It is not unworthy of notice that it was only so lately as

* There are many places having the affix "by" still attached; as *Derby, Appleby, Burnby, Corby, Grimsby, Hornby, Kirby, Rokeby, Selby, Whitby*, &c., &c. It is an old-north word:—"*byggi*" (ædificare) "*bygd*" (districtus terræ habitatæ) in Islandic; "*bye*" or "by," in the Anglo-Saxon form; but found in the earlier "big" in the *Leges Burgorum* of Scotland. (See Chapter 29, § 2.) See the name "*Synri-bygd*," explained in "Discovery of America, by the Northmen in the Tenth Century:" By the Author of the present work (1839), p. 334 and 339.

† See pp. 101 & 114; and see "Corporation and Freemen" throughout; and Coke's Reports, vol. v., p. 63 (a), 67 (b); Justice Crooke, III. Rushworth, Appendix, p. 184, &c., &c.

‡ See Rolls of Parliament, 4 Henry VI., No. 32.

§ The History of the Aldermen of London is very curious and illustrative. The first of that name were in 1200; having been earlier, *hundred-men*, as seen before, p. 218. At first they were not annually elected: but it worked ill, and they were made annual, and not eligible to re-election. This was not satisfactory, as a valuable officer was often dismissed. They were made, therefore, re-eligible in 7 Rich. II. (A.D. 1384). This seemed so useful that, nine years later, it was, not very wisely, determined (and enrolled as a Statute in Parliament) that they should hold their offices *until displaced* for reasonable cause. The power of displacement, however, is in the Ward-motes, both at Common Law, and by the necessary construction of this Statute.

the year 1785 that a Statute was passed by which Elections for Members of Parliament were appointed not to be on the *regular* Shire-mote days, but on special days. It will be immediately seen that this was only one of the steps in undermining the reality and felt importance of these Institutions of Local Self-Government. Even by that statute, however, the meeting to be held for the purpose of such elections is recognized as a Shire-mote; but, instead of the fixed and regular one, known and recorded for at least seventeen centuries, it calls it a "*Special* County Court." *

It has been seen how these Institutions were set in action. They were not dependent on the capricious summons of Alderman, Hundred-man, or Sheriff; but met at their regular and fixed days; as the Shire-motes are, by Law, bound to meet, monthly, even at this day. There were certain matters connected with enrolment, the discharge of public duties, the public health, encroachments, &c., &c., which were always, as a matter of course, laid before them, and of which the full particulars are happily preserved to us in many different records.† But any matters, besides these, might be brought under their notice, and frequently were so, either by the Ministerial Officer, whether Sheriff or Crown, or at their own pleasure.

In the Leets scattered all over the land, the discharge of many of their functions remained in full vigour in the eighteenth century: in many of them remains of these functions still exist: in all, the skeleton yet lives, as in the Shire-motes, capable of every practical reanimated application the moment that earnest men shall arise who prefer the ennobling self-respect of Local Self-Government to the dull selfish materialism of Centralization.

The institution of Justices in Eyre should not be altogether

* 25 Geo. III., c. 84, § 4.

† See extract after, in Chapter XXI. It is worthy of special remark that the Sheriff's tourn was, two hundred years ago, in such habitual use that Coke says, of the articles of inquiry regularly discussed at it:—"The articles inquirable in the Tourn are known, and need not be here rehearsed." 4 Inst. p. 260.

unnoticed in this relation.* They were instituted, it is said, in 1176; and the object of them was, that, going through the land every seven years, the free and true working of the Institutions of Local Self-Government should be the better maintained, and an additional guarantee afforded of the fulfilment of the law and the repression of wrong-doing. The plan was well devised for the purpose. The Institutions of Local Self-Government retained their full independence. Instances are, indeed, on record where the Justices in Eyre were turned back by the people, because they did not come at the regular time, and they would have them at no other.†

Such is a brief glance at the nature of the practical Institutions of Local Self-Government which have been maintained in vigorous activity in England for centuries, and the skeletons of which, capable of full re-invigorated activity, still exist. The application of the lesson that they teach, and the proof of capability afforded by the history of them, are clear and simple. They are, in spirit and principle, of as much importance, and as applicable, to our day as they have been in any past time: and it is only the enemies of freedom; the foes, whether secret or avowed, of Free Institutions; the supporters of oligarchism and corruption; the penners-back of human progress; the crushers-out of self-respect and moral independence; who will turn away incredulously or with indifference from the teaching. Unhappily too many such are found, under the material utilitarianism, sickly sentimentalism, and pseudo-liberalism of modern times.

Love and reverence for the name of Alfred, the Great English King, has lived, through a thousand years, in every good man's breast. Alfred's greatness consisted in this:—

* From among the numerous references that might be given, it will be enough to direct attention to the 4th chapter of Horne's "Mirrour," sections 20 & 21; and 4 Inst. 184.

† "Totus comitatus [Worcester] eos admittere recusavit, *quod* septem anni nondum erant elapsi postquam Justiciarii ibidem ultimo sederunt." Wharton's Anglia Sacra, vol. i., p. 495.

that he knew the value of the Free Institutions of his country; sought not to make new Laws of his own devising, when "it was unknown to him what of them would be liked by those who should come after him;" but gave all his efforts towards re-invigorating the practical activity of those native Institutions of Local Self-Government which have been glanced at in this Chapter. It has been well, and with a not-uncalled-for tone of indignation, remarked that,—"Care is now to be taken lest that conceited criticism, which, hand in hand with desires subversive of all political Institutions, threatens to annihilate both the learning and the solid weal of Europe, in its narrow ignorance efface the memory of the greatest benefactor of this portion of the globe." *

* Lappenberg's History of England under the A.-S. Kings; translated by Thorpe, vol. ii., p. 65.

CHAPTER VII.

"REFORM" PANACEAS.

THE eager seeking after something better, beyond the actual condition, is one of the happiest impulses implanted universally in man. It has already been shown what full and healthy room there is for the activity of this impulse under the system of Local Self-Government, and how it is chilled and kept uneasily down by the system of Centralization.*

In the vague and common cry for "*Reform*," however, no truly earnest man can join. There is in it nothing real. It is not built up on any faith in man;† and can command the sympathies of no one who has such faith. It is the cry which is always easily raised when any end is wished to be gained by one person or party, at the expense of another person or party. The word proves nothing, however much, unhappily, the unthinking part of the public (carefully kept so at present) is too often misled by it to fling up the cap in support of measures really dangerous to public liberty and suicidal to their own highest interests.

A kind of instinctive sense that something is not right in social and political relations which have become, and are more and more becoming, wanting in manliness, by the growing spread of Centralization, leads men to [illegible] any one who [illegible] "Reform." But there is, unhappily, daily less and less reference made to broad PRINCIPLES, by which what is said to be wrong, and what is proposed as Reform, shall alike be tested. Vague, indefinite, and empirical suggestions are made by really honest men; but it is entirely forgotten that what has

* Before, pp. 42, 55.

† See before, p. 53, 55.

endured for so many centuries (though some of the wheels may be now clogged) must have had something very sound at the bottom of it, which it must be well worth while to search into. Every truthful student of history knows that, with every branch of our Teutonic race, it is *liberty that is ancient, despotism that is modern;* and every thoughtful man will, therefore, feel that the surest and safest course must be, carefully to search into the causes and the course of the earlier liberty, and of the growth of modern encroachments, and so to learn if there is anything in the conditions of modern society and civilization that makes the principles on which the former flourished inapplicable in our day.

If "Reform" is to mean Progress instead of mere random Change, Experiment, and for-ever-beginning-anew, it must be built up on solid foundations, and be carried out in practical consistency with some definite and clear principles. Nothing can be idler than putting forth the mere empty declaration of what, on a superficial view, is asserted to be wrong, or it is imagined ought to be done. This, though a very common course, and usually arrogating the exclusive title of *practical*, is, if possible, of even less value than those numerous paper Constitutions which—beautiful to read—have a permanent existence only as ornaments of the cabinets of the curious.

We may set to work like the highwayman, and attempt violently to seize what, by the very act of so doing, we admit not to be rightly ours; or we may, more laboriously it is true, but much more rightly and hopefully, show that the true title is actually vested in ourselves, and that it is only by encroachment and usurpation that we are kept out of any part of what is thus truly ours.*

There is assuredly no royal road to freedom. All the political panaceas that have, since the Revolution of 1688, gone under the name of Reform, have ended, and all of that class must end, in disappointment only. They are all based, however liberal their pretences, on the idea of all *reliance*

* See the last chapter, p. 212.

being placed on *others*, instead of constant *self-reliance* being stimulated. It is forgotten that, if we would have Free Institutions, we must ourselves earn them and maintain them, and that the effort is a worthy one. There are many who boast much of the glory of the *Representative System*, and therefore call for an indefinite "Reform" of it;—forgetting, while they speak, the very meaning of the terms they use. There can be no real Representative System, without there being, as its basis, an actual pervading healthy opinion,—and, therefore, the *power of forming and expressing such opinion*,—in the *Represented*. Education of the kind of which we hear so much will do very little towards this. The highest mental cultivation may, and often does, exist without any political education, or power of forming sound political opinions.* And yet, without this latter education and power, in *all classes*, there can be no true representative system (either local or general), however extended the numbers of the electors may be, and however frequent the elections: without it, the Many merely let themselves be made into the tools of those whom they are drilled or cajoled into electing; and with really less independence than the *villeins* of old enjoyed. It is in full accordance with these obvious truths that the whole framework of the Social and Political Constitution of England has for ages rested, as has been already fully shown, upon arrangements, simple but complete in all their parts, for the full, free, habitual, and peaceable education and expression of a sound Public Opinion. It is the encroachments upon these that need the true amender's hand.

What is wanted is for men to be really in earnest; taking a comprehensive view of the whole Political and Social Union, and of the relations of its several parts to that whole; and not confining attention to one or two points only, while others are overlooked. This latter has been the special tendency of the "Reform" panaceas of the nineteenth century. Such was the case with the "Reform Bill" itself; pronounced a panacea at the time; but with which all men were dissatis-

* See before, pp. 50, 53, 67.

fied within less than twenty years after its passing. That measure—planned and brought forward with the best motives—was, unhappily, framed in disregard to any considerations of Constitutional Principle: it confounded mere change with betterment; and, in the true spirit of Centralization, it dealt in finalities, revising barristers, and other devices containing marks of the unstatesman upon every one of them. It declared no great principle, which, as the exigency arose, would become self-applied towards carrying out the true spirit of Free Institutions.

No "Reform" *programme* can ever command the confidence or respect of the thoughtful man. True measures of progress cannot be *dictated;* they must be *discussed*, and after full discussion, willingly and intelligently carried out. It is easy to talk loudly of abuses; less easy clearly and comprehensively to trace their sources, and to develope the true practical modes of remedying them.

If we look at what alone can be considered as the practical result which has followed from this dealing in "Reform" panaceas, it certainly is not very satisfactory. Reform and Retrenchment may serve well to talk of on the hustings; but those who talk loudly about Parliamentary Reform ought, at the least, to give, in their own persons, some idea of what an entire Reformed Parliament would be. They, at least, ought to be found ever active in the fulfilment of their duties, and ever ready to resist encroachments, open or stealthy, on the liberties and independence of the people. But has it not, on the contrary, been often seen that there is no set of men in the House of Commons who do less towards the maintenance of the rights and liberties of the people than the "Reform" members; none more careless to resist encroachments, whether open or stealthy; none more ready to sacrifice the reality of those rights and liberties to any clap-trap scheme which disguises a huge job under some "flattering preamble;" none more habitually wanting in that watchful observance of what is doing, which can alone enable a Member of Parliament to fulfil his duties? The duties of a Member of Parliament do

not assuredly consist in an occasional speech or vote on some exciting topic, or on some popular motion which it is known will not be carried;—but they consist in careful, assiduous watching of every measure, great and small, and every proceeding before the House, and in being ever ready to interpose on any occasion, and however plausibly disguised,* where there are symptoms, open and unmistakeable, or silent and stealthy, of encroachments on the exercise of the rights, duties, and responsibilities of Free Men.

None of the "Parliamentary Reforms" that have ever been proposed have had, in themselves, the end of doing what should be the first and foremost step,—elevating the moral

* See the Maxims of the enemies of Free Institutions in Chapter VII. Numberless measures of this class pass through the English Parliament every session, unheeded by those who make, on the platform, great professions of their eagle-eyed regard for the public welfare, and who make popular addresses on the Hustings, and make speeches and give votes on occasions "where they may be seen of men." Thus, to give only two examples:—in the Session of 1850 no less than three Acts passed, confirming a large number of purely arbitrary acts of Delegated Legislation, which had been prepared in secret, and without any consent or knowledge of those who were to be affected, by an irresponsible Board, the Board of Health; and each one of which acts of Delegated Legislation contained matter that every honest man in the House of Commons was bound to have resisted. In the same session, the Act of 13 & 14 Vict., c. 57, already named (p. 206), for emasculating Vestries, was passed; the preamble to which contains the disgracefully hypocritical pretence that it is a "scandal to religion" (reserved for the year 1850 to discover) that men should meet in churches to fulfil their duties; thus teaching that what is *called* Religion is incompatible with the high sense of moral and social responsibility which ought to be a part of the daily feeling and motive of every man: and with which true religion would assuredly best harmonize, instead of being proclaimed scandalized by its practical exercise. Such a preamble, to such an Act, forcibly recalls the maxim, in Rawley's Prince, of "the sophistical or subtill tyrant to hold up his state,"—which is equally that of the Centralizer seeking to destroy the sense of their rights and responsibilities in freemen;—"to pretend great care of Religion and of serving of God (which hath been the manner of the wickedest tyrants); for that people doe lesse feare any hurt from those whom they think virtuous and religious;" p. 29. See further, Chapter XXIV.

independence of the people and their intelligent capacities. The tendency of each one has been merely to elevate into power this or that clique instead of another one;—to give preponderating influence to this interest or that class, at the expence of other interests and classes. Not but that very many sincere men have joined in the Panacea cry of Parliamentary Reform,—led away by sounding pretences and their own honest aspirations, and by the prevailing want of knowledge on Constitutional subjects, to worship what is but a name and a sham as a thing and a reality. Those, however, are but strengthening the hands of the insidious strivers after Centralization, who teach that any reform in Parliament, or any increase in the elective franchise for its members, can, in itself, give hope for social or political improvement. *Such changes, unaccompanied by the renovated activity of the institutions whose nature has been before sketched, can but lead again and again only to disappointment and to greater evils.*

The greatest "Parliamentary Reform" needed is an improvement in the actual quality of the members: which will never come until a greater sense of responsibility and self-respect is created by the fact of the represented being themselves well informed upon, and well accustomed understandingly to watch, all proceedings of Parliament, and being satisfied only when represented by men who have studied, and have given proof of their earnest determination to maintain, the true Principles of the Constitution.

But the great evil done by this cry of Parliamentary Reform remains to be mentioned. It has already been several times incidentally alluded to. It is the inference which is implied, and which all friends of Centralization seek carefully to cherish, that Parliament is to be looked to for everything; that Parliament can accomplish everything; that ink and paper law-making is to be the salvation of men, Politically, Morally, Socially, and even Intellectually. Of all the ill results produced by the Parliamentary Reform cry, this is certainly the greatest. Unhappily it suits too well the purposes of two classes besides those of the Centralizers, who

directly encourage it; namely:—(1) those who trade upon the agitation of Parliamentary Reform; and (2) those who have been gradually led along, by the silken cord which Centralization spreads, to esteem material well-being, and therefore the pursuit of material objects, as the most important and all-engrossing consideration of life, and who would therefore willingly hand over to Parliament, or to any one, the management of, and control over, those affairs the taking an active share in the management of, and control over, which it is that marks the difference between the freeman and the slave. The more men are led to rely on Parliaments, the less will their own social and political duties be discharged, and the less will the true functions which belong to Parliament be discharged by it.

Let a glance be rapidly taken at the six matters which have usually, within the second quarter of the nineteenth century, been treated as the heads and seekings of Parliamentary Reform.

The demand for Electoral Districts has been already touched upon, and the obvious but all-important fallacy that it rests on has been pointed out.* It strikes at once at the root of all true National Representative Institutions; of all Institutions of Local Self-Government; of all moral and political independence; of all social duty and responsibility. If Institutions of Local Self-Government, in any shape, should exist under it, it can only be in some vague, indefinite form, with no wholesome mutual relations; jarringly and discordantly, and as mere *imperia in imperio*;—a condition of things the most contrary to what any wise and patriotic statesman would willingly help to bring about.

The question of what is called The Franchise comes next. The bearings of this question have already been shown and illustrated.† The mere *time and act of election* are all that is touched by the Franchise panacea. At every other time, every man, whether he have the Parliamentary Franchise or no, has his full weight,—which the occasional exercise of that

* See before, p. 73.

† See, particularly, Chapters I., II., IV. and VIII.

mere Franchise can neither increase nor lessen,—in swelling Public Opinion; so far as other arrangements, not proposed to be touched by the prophets of this panacea, enable such Public Opinion to be formed and be expressed at all. But it is self-evident that the mere act of Election can create no true representation; and that none such will ever exist unless, by the constant habit of observation and active personal discussion, the electors are trained to understand, fully, all the classes of subjects with which the elected have to deal. Thus the "Franchise" panacea is brought pretty nearly to what logicians call a *reductio ad absurdum*.

It is, however, undeniably, the common habit to blink all these practical questions, and exalt the importance of the mere act of Election—the mere empty husk. It is the interest of those who talk loudest of popular rights, in the Parliamentary Reform sense, to trumpet forth the *day of election*, and there stop,—leaving all the other days in the seven times 365 to take their happy or hapless chance. And the lower becomes the class of men who seek the House of Commons, and the more subservient the spirit of the people, the more will the day of election be glorified, and men taught to worship Parliamentary Reform as a panacea,—because, the more numerous the mass of mere blindly led voters, the easier it will be for the ignorant, the incapable, and the designing, but the blustering, the boastful, and the unprincipled, to obtain a seat in Parliament.

It will be clear from what has been said in foregoing chapters that the course pursued by those who are sincerely anxious for an enlarged active enjoyment by their countrymen of the rights of freemen, but who begin by seeking an extended parliamentary suffrage, resembles precisely the mode pursued by the philosophers who, despising the inductive method, grope on in the old empirical system of *anticipation*. They would rush at once to a *Generalization*, without having made good any of the absolutely essential *Special Instances* on which it must depend—instead of beginning with a careful and soundly-worked elaboration of the latter. The full development

and true practical activity of Institutions of Local Self-Government must always, and in every country, be incomparably more important to the national well-being; to the independence of the people; to the preservation of their rights and liberties from infringement; to the maintaining of the actual and continual responsibility of those intrusted with authority; to the progress of the nation; than is, or ever can be, the mere parliamentary franchise.* No stickler, indeed, for old and worn-out usages, merely because they are old, was ever a greater worshipper of mere hollow forms and names, instead of things and realities, than is, thus, the pretended "Reformer" who preaches or believes in the panacea of "Parliamentary Reform" and the "Extension of the Franchise."

There is no doubt that the tendency of the Reform Act has been, not to put the actual franchise in the hands of the most independent and the most intelligent class of the community, —the artisan class,—but into the hands of a class which, though most mistakenly and unwisely, is actually and increasingly, owing to the growing influences of Centralization, the least independent of any;—namely, that of small traders and retail shopkeepers. And every fresh peddling instalment of the free man's rights proposed, helps not this defect; but increases the mischief. In their honest callings, and mixed equally with their fellow freemen, the small traders and retail shopkeepers are as respectable and valuable a class as any in the community; as capable of fulfilling all their duties; and with as much interest and sound policy in doing so independently as any. But, when singled out, for the very reason that their callings necessarily make them more dependent on the favour and support of others than is the case with the artisan and other classes, whose personal exertions are their surest dependence, they become peculiarly liable to the non-independent discharge of their duties as electors. It is no less

* To prevent misunderstanding, it is proper to recal the reader's attention to ch. iv., pp. 71, 87, &c., in which the existence of a National Representative Assembly is shown to be a part of a complete system of Local Self-Government.

unjust to them (and felt by many of themselves to be so) to place them in this invidious and demoralizing position than it is to the excluded classes. But such is only one of the crafty devices to which the foes of free institutions and of moral independence have recourse.

The demand for *universal* suffrage is the only demand which has earnestness in it and truth for a basis.

There can be no shadow of question that, by the Common Law of England, Universal Suffrage is the inherent Right of the People of England. This has already been proved.* But then comes the question, what is, specifically, meant by Universal Suffrage, and for what, and how, is it to be used?

If by Universal Suffrage is meant (which is what many do mean) that more men shall be able than now are to be driven up, like sheep to the slaughter, to poll for him who talks loudest on the hustings, then indeed is Universal Suffrage a pure and unmixed evil, a stayer of all progress, and unknown to the Common Law of England. It will merely be the machine for the more easily delegating empire to an oligarchy. And this is what Universal Suffrage always will be, as used in the Parliamentary Reform sense, and stopping there.

It is apprehended that the only sound definition of a true Universal Suffrage is;—that *Every freeman has the inherent right and duty, by the Common Law of England, to take an active part in the management of all the affairs that concern him:*—while the "Freeman" may most properly be defined as—*Every grown man who maintains himself and his immediate family upon the results of his own freely disposed means of effort.* These definitions appear to include all the true conditions for a sound system of Political and Social well-being. Undeluded by any idea of the omnipotence or supremacy of Parliament; well aware that, in the place where his lot is cast, by far the larger part of his interests lie, and that their well-ordering can only be accomplished by the active consciousness within every

* See before, pp. 79, 102; and the whole of Chapters ii. & iv.

freeman of the right and responsibility to lend a helping hand to the work; the freeman will always give his *first* thoughts and efforts there. He will always find it, however, to be one incidental, but necessary, consequence of the true fulfilment of his rights and duties in the capacity last named, that he should take part in the election of Representatives to Parliament.

This definition excludes every man who lives on alms, every man who will not use his powers in accordance with the duty and responsibility he owes to society, and every criminal. All these, it is clear,—and no others,—ought to be excluded.

But this idea of Universal Suffrage embraces, as an essential, that of the existence of Institutions of true Local Self-Government. Universal Suffrage without these is but another name, be it disguised as it may, for either oligarchy—or for anarchy. Between these two the only alternative can in such case lie. No sincere friend of humanity can wish Universal Suffrage, unless that suffrage is to be an intelligent one. This it can only become by means of the full practical activity of Institutions of true Local Self-Government. Nothing else can supply the needful practical Social and Political Education. Schools and Colleges, whether National or Secular, and however pedantically ordered or approved by Committees of Council and Inspectors, will never help to this.

The next point is the Vote by Ballot. Under the existing vicious practical conditions of the exercise of the Suffrage in England, whether Parliamentary or Local, it is not to be wondered at that men unfamiliar with the genius of the Constitution should have suggested the Ballot. Were those conditions necessary or lasting, the Ballot might help to remove some of the immediate evils that follow. But the proposition for such an application, as a true remedy, is but as when the skill-less surgeon applies a mere topical remedy to some external symptoms of a disease, leaving the true seat of the disorder unsearched for and untouched.

Let what has been said already of the true spirit and genius of the English Constitution never be forgotten. It is,—that

the characteristics of the freeman are,—that he is conscious of duties and responsibilities; that no matter which those duties and responsibilities teach him to handle, is to be determined on without full, free, and open discussion,—the result of which, unless it is to be a solemn farce and a mockery, can only be declared alike openly and before his fellow freemen, bound by like duties and responsibilities as himself is. He who would support the application of Vote by Ballot must be prepared to maintain that opinions are best formed by carefully shutting the door on that knowledge and discussion whence only truth can spring; that conscious self-respect, moral independence, and a sense of social duty and responsibility, either are things bad and useless in themselves, or that they will grow best when men are practically taught to shun their fellow-men, to live silently and selfishly within themselves, never letting true utterance escape their lips, not daring to use the faculties which God has given them.

The urgers on of Centralization encourage the asking for the Ballot; because it implies, and the practice of it will always generate, apathy, indifference, want of independence and moral courage; and because it shuts the door at once on all that true *discussion* which is the great and hated obstacle to the realization of schemes of Centralization.

It has already been shown that the system of delayed polling is unlawful, and that the only lawful mode of taking a poll is in the way of a Division, as in the Houses of Parliament to this day; the absent being bound by the present;*—only that the Law does not recognise the power of *trustees* so to neglect their duties as that constituents shall be bound by acts done by a mere microscopic minority of the Representatives.†

The Shortening of Parliaments is the next point. And this is the most tangible of all the propositions; and the most real. But the proposition for Triennial Parliaments is only coqueting with the subject. It has been shown that Annual Parliaments are those which alone the Common Law of England

* See before, p. 198.

† See ch. viii., the IIIrd. Constitutional Safeguard.

recognises,* and which alone were practised till a late period; that the law as to Triennial Parliaments was the offspring of an unprincipled reign; and as to Septennial Parliaments of a still more unprincipled one,—inasmuch as it was the offspring of a Revolution which professed to be for the remedying, not the accumulation, of grievances.

Most important would be the effect of the restoration of the lawful Annual Parliaments. It would tend in itself, very much, to promote the re-activity, spontaneously, of the Institutions of Local Self-Government.

No true argument has ever been raised against Annual Parliaments. All the specious reasons assigned do but prove either ignorance of history or the consciousness of a weak case. The unanswerable *fact* is, that Annual Parliaments prevailed in England for centuries; and worked well, and were the means of maintaining the liberties of the land. Wherefore is the boast of improvements in means of rapid intercommunication, if it is more troublesome and difficult to have Annual Parliaments now than it was 500 years ago? As to the argument, sometimes used, about Parliamentary experience, it is so obviously fallacious as hardly to deserve notice. No sane man would propose that members should not be re-eligible. He who has done his duty will, as heretofore, be re-elected: who not, dismissed. The points gained will be, that all will be truly responsible; and that the disgraceful corruptions practised where it is made worth while to practise them, through the prospect of a seat irresponsibly secured for years, will altogether cease.

The real objection to the restoration of this only sound system, under whatever pretences that objection may be disguised, is, the disinclination Members of the House of Commons have, whether they call themselves "Reformers" or not, to become truly representatives and responsible. Even this is most short-sighted. The dignity of a true Representative, and of a truly responsible body, will always be unspeak-

* See before, pp. 82, 129.

ably higher than can ever be that of an oligarchy which maintains its position merely by usurpation.

All practical difficulties as to frequent elections vanish under a system of true Local Self-Government.

The demand for the Abolition of the Property Qualification is simply an appeal to common sense. Neither Common Law nor Common Sense can justify the artificial help to oligarchism which unlawful Statutes have created, in the way of a Property Qualification, as to a *part* of the Members of the House of Commons, and not as to another part. The only true qualification needed is, the Representative being a free man, and approving himself, as fitting to represent them, to men who understand the duties that have to be discharged by him.

The last point is, the Payment of Members. It has been already shown that this is the Law now, even by Statute. The demand for its fresh enactment is merely an acknowledgment, therefore, that the askers are not in earnest. Such a demand may serve very well for declamation on the Hustings, but it is clear that some strong motive must exist for those who profess to urge this demand not really wishing it to be realized; or they would not be content with urging it, but would practise it. Any single Member of the House of Commons has it wholly within his power, by his own act, to restore the wholesome practice of paying Members.*

Thus have the main points of the "Reform" Panaceas been glanced at.† As to all and each of them it will be seen

* See before, pp. 83, 132.

† It does not seem necessary to enter at any length on the subject of a proposition for "County Boards" which has been agitated for some years. What has been proved in this Volume as to the only sound Principles of Institutions of Local Self-Government will conclusively show that this proposition, as put forth, is inherently vicious in idea and principle, and can never result in lasting good. It were difficult to imagine, indeed, anything more vicious than the constitution of a Board,—nominally Representative,—to consist in reality of the Appointees of Boards of Guardians! At present the Sheriff is bound to hold his Monthly Shire-mote; and any number of earnest men may, at any time, re-invigorate to living activity that invaluable Institution.

that their practical value must depend entirely upon their being separated from the idea now attached to them, as means to make Parliament the one omnipotent referee and dictator. What of them contain the germ of good, can only fructify for good by becoming practically realized in connection with true, and every-where existing, Institutions of Local Self-Government.

The "County Boards" proposition (as put forth by its authors) amounts to this;—that the rights and duties of freemen are to be altogether put out of sight; the power and inducement for their exercise to receive another blow; and that another sort of petty oligarchies is to be erected, under the *name*, indeed, but without the shadow of the *reality*, of Representative Bodies. A simple and practical means for true County Representative Boards might easily be framed, and would be of the highest value. The principles on which it must, to be sound and lasting, be framed, have been fully illustrated in these pages. In the meantime, no intelligent body of freemen will certainly look at the proposition that has been put forth as other than a Mockery, a Delusion, and a Snare.

CHAPTER XVII.

PRACTICAL COURSE OF THE TRUE FRIENDS OF HUMAN FREEDOM AND PROGRESS.

THE difference has already been noticed between resistance to the in-coming of mischief, and the active forwarding of prospective good.* Both will be the desire of the earnest man and patriot; and each will help the other. What has been said as regards resistance to the attacks on free Institutions leaves it only now to notice some practical means towards forwarding prospective good.

How little the English Constitution is generally understood has been already deplored. Yet is a clear and generally diffused knowledge of its principles the only possible foundation for political and social prosperity and freedom; while a full knowledge of its details is essential to any one who, without incurring the just charge of impertinence and presumption, would take a leading part in any great political or social work. Whether the work be one of removal, of alteration, or of renovation, an accurate knowledge of that which is proposed to be removed, altered, or renovated, is an obviously essential preliminary.

Guided by such knowledge, the work of the earnest man and patriot may be said to be fourfold, namely; *Resistance; Removal; Restoration; Development.* And this enumeration will be the natural order of his definitive labours; though,

* See ch. xiii.

to a certain extent, all parts of the work may go on together; —and increasingly so as he perseveres in his task.

I. The work of *Resistance* is what has been already considered. It will be resistance to every step, open or stealthy, in the path of Centralization; protesting, and demonstrating the grounds in reason and Common Law of the protest, against everything like Delegated Legislation, or Summary Jurisdiction, in any shape; against every measure embracing any such things as secret voting, delayed polling, or silent or solicited petitioning; against every form of patronization and interference; and against any innovation not consistent with the spirit of the Common Law.

This will help on the work of forwarding prospective good, by opening the eyes of men to the evils of the system of Centralization. At the same time that it teaches them to resist further encroachments, it will necessarily lead them to demand the advancing steps of Removal, and, following that, of Restoration, and Development.

II. The *Removal* will be, of whatever of encroachment and Centralization has already succeeded in planting itself in the land. This is a work certainly no less necessary than the former; and needing only steady perseverance to accomplish it. The method will be, by a quiet, but earnest and persevering, determination being shown to insist, in every lawful way, upon asserting the unlawfulness of the shackles and trammels that have in any way been put upon the discharge of the rights, duties, and responsibilities of freemen. It is an effort in which all men will unite, when the bearings of the subject are once understood, who, with real earnest sincerity of purpose, would aid in promoting the wider active enjoyment of Free Institutions.

III. The work of *Restoration* will be, to bring back again into constant use and general respect the principles and practice of the Common Law of England; and, as parts of it, though all are closely intertwined together, to insist on the emphatic re-declaration of the essentials of true Local Self-Government, and the giving to those re-declarations a living and active

reality; to insist on the true Law and Custom of Parliament being restored to their full controlling place, and that Parliament shall not longer be but a form and a disguise by which the better to wrap up and carry out the encroachments of Centralization; and to insist also upon the practical observance being restored of all those Constitutional Safeguards by which only Statute Law can be kept in harmony with Common Law.

Lastly; the work of *Development.* And nothing nobler can engage the attention of the true man than the means by which Free Institutions shall be more fully developed, and all the powers and faculties which God has given to man have fuller scope given them for wholesome exercise.

Institutions of Local Self-Government having been proved to be the only means by which the powers and faculties and energies of men can have scope given them for exercise, or Free Institutions be a reality, the great aim must be to develope these as widely as possible, and to impart a perpetual freshness and truthfulness to them. The object must be, in every matter propounded, to consider how it stands related to the duties and responsibilities of free men; how, if it be in itself sound and good, the consciousness of those duties and responsibilities may be best stirred up so as to embrace the matter propounded. Not the selfishness and mere convenience of men must be appealed to, in order to attain any end, but their sense of responsibility, and of public duty. And it will ever be the sure mark of whether the matter propounded be good or ill, according as it is proposed to be worked out by means appealing to the former or by means appealing to the latter.* Every measure of Summary Jurisdiction, of Delegated Legislation, of centralized interference or control, of Centralization in any shape, makes the former appeal: the latter can only be made by measures embracing the idea of Local Self-Government as the fundamental one.

The great aim must ever be, in restoring and developing

* See before, pp. 122 & 144.

the activity of these Institutions, to keep alive that self-reinvigorating spirit which will, by its own inherent energy, give continually renewed vigour to their true and efficient working.

The clear light of Principle must always be the guide. Expediency must not be allowed to warp it; nor any specious empiricism to draw off from the unbending following of it as the only pole-star. No proposition must be consented to be looked at in its merely individual bearings, however specious these may seem;—but in its relations to a comprehensive whole, of which it must, if adopted, fall into place, in practice, as a part. It must be remembered that every false step made, leads surely on to another false step; that every inroad allowed to centralization opens the path to other inroads, and creates a specious show of need for more centralization; a consequence, of which the forwarders of centralizing schemes are well aware, and upon anticipation of which they systematically act.

It is often pretended that the mass of men are not fit for the discharge of the duties of Local Self-Government. This is but an example of how every inroad of centralization helps further inroads; how the forwarders of that system ever seek to take advantage of their own wrong. It is too true that the enemies of human freedom have, for too long, been gradually and too successfully undermining the practical sense of political and social duty and responsibility; and that this sense is now, in a large number of men,—but especially in those who call themselves the educated and refined classes,—very dull and dead. Obsequiousness and sycophancy are, unquestionably, the characteristics, in the middle of the nineteenth century, of those who ought to set the example of independence and of public spirit. But it is one of the happy parts of man's constitution that earnestness is infectious,—nothing more so. Let the true spark be kindled, and all but the mere slaves of conventionalisms will soon see the light. When men have once learned thoroughly to understand the duties and responsibilities which the Common Law imposes,

and the extent and mode in which their fathers asserted and fulfilled these, their own sense of moral dignity is raised, and they become themselves earnest for the work. And though some little time may be needed to reach, again, the the full practical development, that time will be but short; and the best assurance for the maintenance of that development is self-supplied. Institutions of Local Self-Government will always be their own best schools to make men fit to work them well.

It is not proposed to suggest here any specific measures. Such might be pointed out: but an earlier step is the understanding why and wherein the system of Centralization is mischievous, and that of Local Self-Government the only true and sound one by which Free Institutions can be maintained. Measures will readily develope themselves when this shall have been learned; and far more profitably and soundly than by the propounding of any scheme or programme by any individual or narrow circle. The single aim of this volume is to make a few broad, and fundamental, and everlasting PRINCIPLES thoroughly comprehended. Practical results will speedily grow, in a sound and healthy manner, out of the understanding and discussion of these.*

* It was thus that an opportunity presented itself for suggesting a practical course as regards the Metropolitan Districts, arising out of Discussions upon the mischievous operation of the Metropolitan Sewers Act, 1848. After several meetings of numerous Deputations from the Metropolitan Parishes, at which the whole bearings of the question were discussed, it became necessary to bring forward, in some definite shape, the proposed remedy. It became, in the strictest sense, forced upon the present writer to offer a proposition. This was very fully discussed, and, after such discussion, was unanimously adopted (10th Jan. 1851), as "embodying the only principles" on which satisfactory administrative arrangements could be framed. Though brought forward with reference to the administration of matters of Sewerage and Drainage, and to the Metropolitan Districts, it was framed, and is applicable, with reference to all matters of Local Interest and Administration, and in any part of the country. It is based upon the Principles, and suggests, indeed, a practical mode of

In conformity with this spirit, it should be again remarked, that any measure which may be brought forward, in order to fix public attention upon the importance of these great principles, should be of a *Declaratory* nature:* stating shortly, and simply, and in language that any man can understand, a few clear and fundamental Principles; setting forth the heretofore used practical application of them; asserting the necessity for their renewed practical recognition; and pointing to the

carrying out the ideas, explained throughout the present work. The following is a copy of the short, but comprehensive, outline thus suggested and adopted:—

"HEADS OF BILL

For carrying out Administrative Arrangements.

"A representative body,—elected by the householders of Parishes within a given range,—to have the special duty of making Districts.

"THE FOLLOWING TO BE THE FUNDAMENTAL PRINCIPLES IN THE CONSTITUTION OF DISTRICTS.

"No District to contain less than *one hundred thousand*, nor more than *one hundred and fifty thousand*, inhabitants.

"Each district to be divided into wards; each containing not less than *five hundred*, and not more than *one thousand*, male adults. Those who have occupied within the ward for a year and a day to be the electors for the ward. Each ward to have *two* or more representatives, annually chosen (but re-eligible), to a DISTRICT COUNCIL for carrying out all local purposes.

"To be an express duty of *one* or more of the representatives of each ward to meet, in open meeting, the inhabitants of their ward once every month at the least, to lay before them the proceedings of the District Council, and to receive any complaints or suggestions.

"A GENERAL COUNCIL, for all purposes where combination is needed, to be formed of *two* persons elected out of its own body by each District Council."

[*N.B.—The words in italics show the proper* PROPORTIONATE *divisions and numbers; but are not laid down as, necessarily, definitive.*]

* See before, p. 155.

simple means of realizing this. Discussion and example will do the rest.*

It is not by special "Associations" for the purpose that the Principles of Local Self-Government are to be developed. Such Associations may do something, possibly, as a means of

* It was with such ideas that, at the meeting of the Freehold Land Societies in Birmingham, on 8th November, 1849, the present writer threw out, as a practical means of showing the value of Free Institutions, and the rights, duties, and responsibilities that attach to Freeholders, the following suggestion of a Resolution. He did not think it well to press it on that occasion, because public attention had not yet been sufficiently called to the subject, nor were Freehold Land Societies regarded, by most, in other than the vicious light of a mere party Political Engine.

"WHEREAS it is essential to every true system of Political Reform that it be founded on a sound and practical knowledge of the Laws and Institutions of England, as handed down to us from the earliest times of our history;—and whereas no principle in those Laws and Institutions is so important and so continually enforced, as the immediate derivation of all Law and Authority from the People, and consequently the Responsibility to the People of all intrusted with authority;—and whereas the only means of exercising the powers, rights, and duties recognised by the Fundamental Law of England as thus inherently residing in all the Commonalty of the Realm, are provided and secured by the full, free, frequent, and periodical exercise of those functions of Local Self-Government which our ancestors were wont, of right and in fact, to practise and maintain:—

"*Be it resolved:*

"That a Committee be now appointed to examine into the Law and Custom of England as regards the Shire-motes, Hundred-motes, and other like assemblies of the people,—as embodying, in the most practical and efficient manner, the principles of Local Self-Government and of legislative and executive Responsibility, and as the most valuable field for the exercise of the rights and duties of Freeholders:—such Committee to report thereupon, in writing, to an adjourned Meeting of this Conference, to be held this day month, with a view to the adoption of immediate measures, *by the Freeholders themselves*, for the restoration to effective vitality of the spirit of those Institutions."

spreading information. But a more legitimate, as well as far more truly practical, means, is by every man taking every fitting opportunity of bringing before assemblies of freemen, public or private, the practical importance and bearings and applicability of the subject.* The principles of Local Self-Government can never be dictated. They must be discussed, understood, and then practically re-asserted. However important their assertion in Parliament is, and will be, it must be remembered that their practical re-assertion needs no Act of Parliament. And though a Declaratory Statute will, unquestionably, be oftentimes valuable, he will be no true friend to freedom or to the restoration and development of Institutions of Local Self-Government who would have men look to Parliament as the means for that restoration. A Declaratory Statute may, in this case and in that, be needed to remove vulgar belief in other Statutes, unlawfully passed, which have imposed special trammels on Local Self-Government; but no Statute is needed for men practically to re-assert the Great Common Law Right of Englishmen to make for themselves, in every place, the Law they use, and to administer it. The skeleton of a true System of Local Self-Government has been shown, in former pages, yet to exist in England: it needs but re-animation. The body of it is in the people: the spirit of it, which has not seen corruption, is in the Common Law: and it will rise yet again to be the salvation of the land.

Should any "party" take up this great question, it must be a party having very different characteristics from those of any that has walked the political stage since the Revolution of 1688. A new party must arise; a true people's party; a party whose cry is not alone that of "Cheap, cheap;" nor yet one which deals in maudling sentimentalism, sickly philanthropy, or spurious liberalism: but it must be a party having a true earnest purpose; prepared to grapple with difficulties, and to overcome, and not only to get round, them; which sees clearly the broad and definite everlasting Principles essen-

* See the two preceding notes, and before, p. 151, note.

tial to Free Institutions, and, taking its stand upon these, is prepared to abide by them. Above all, and before all, it must be a party which has a *heart;* which has a true and earnest sympathy with and faith in the People; whose efforts will, therefore, warm around them the affections of the People; and which, thus supported, will be able to set at naught those truckling fears of different oligarchic interests which now hinder all progress, and compel existing Governments perpetually to halt. Such a party will be able to carry out, in truth and reality, and not merely to put as barren records on the Statute Book, measures by which the People shall be bettered lastingly, and shall become well taught in the great problem—how Freemen may themselves best make laws and administer them.

It was because, a thousand years ago, a man arose who did thoroughly comprehend those principles, that the disasters which, in the history of every nation, are liable to happen, and which then threatened the annihilation of England, passed over as a cloud, and left the country a land of freemen. And though there be no Alfred now arisen, nor likely to arise, we, happily, have yet left to us, as a lesson and a guide, the memory of the deeds done, the picture of the mind recorded, and the story of the institutions cherished, struggled for, and earnestly helped to be handed down, by the greatest, wisest, and most endeared King that ever sat upon the Throne of England or of any other country; one who was thus great, wise, and endeared, because he felt, and taught, and strove in his kingdom to have it truly realized, that, for a nation to be great, and prosperous, and happy, *all Law must spring from the People, and must also be administered by the People;*—principles, both of them, forgotten or unseen by the professed liberals of our day, and carefully sought to be trodden out by oligarchic Governments. The spirit of an Alfred is no less needed now than it was ten centuries ago.

CHAPTER XVIII.

TRIAL BY JURY.

PROPERLY to discuss the subject of Trial by Jury would need a volume. Much connected with its history, purpose, practical working, and importance, has been elsewhere considered at some length.* It must be enough to introduce here a few very general considerations with respect to what it is and means, and what is its value.

Trial by Jury is only one practical application of the principles of Local Self-Government. It is a fundamental part of those principles that Law is to be administered by the folk and people. Trial by Jury is the machinery by which Law has come to be so administered by the folk and people. It is the practical mode of doing folk-right by freemen among themselves.

It is a primary essential, in order that men should be truly free, that law and justice shall not be dealt out by those who have different sympathies, different prejudices, different interests from themselves; and who are therefore unable to understand the motives of action, and consequently the actual moral right or wrong of any act; and unable to understand, also, the consequences of the course which the law may take. All law, among freemen, must be administered by the freemen themselves to their fellows.

That every Cause is to be heard and settled in the place where it arises, is one of the most often-repeated requirements in the declaratory Law of England, from the earliest times.

* "Government by Commissions," Book i., ch. iii.

And this applies equally, whether among simple freemen or homagers. In all cases alike "every cause is to be done and ended either in the hundred-mote, or in the shire-mote; or else in the hall-mote of those having special jurisdiction, or in the Courts of Lords, or in the separate courts of freemen;* and in fixed places nigh to the suitors;—lest remedies delayed and distant shall only add to the wrong already suffered."† In the same body of Laws is found another clause which, with that last quoted, embodies the whole practical mode of the application of Trial by Jury. "If any one doubts any of those who are to judge him, let him challenge him.‡ Every man must be judged by his peers [equals as freemen], and by those of his own place. Judgments by strangers must in no wise be allowed. And if anything shall be judged against any who are absent, in any place or on any matter, or not by a man's rightful judges (*i. e.* peers), it shall be holden altogether void."§

And so, coming later, it is declared in Magna Charta, chapter 23, that neither freeman nor villein shall be amerced but by the oath of honest men of the neighbourhood.

From the time of the earliest traces of the Laws of England, the principle embodied in the practice of Trial by Jury is found declared, as the only means of doing folk-right. But the Jury was originally the whole body of the freemen assembled in folk-mote. This is even still the case in the eye of the Law—proving the spirit of the Common Law principle,—though, in fact, the Jury administration is almost always, now, by a *Committee* in place and stead of the whole. A careful exami-

* See before, ch. xv., p. 224. The two words I thus translate are rather obscure, but I believe this is what they mean. The original is "*dicisis pariumi*,"—standing in contradistinction to *dominorum* in the clause before; a sense in which it is constantly used in old time,—as in *Magna Charta, Modus tenendi Parliamentum*, &c.; signifying, not *Peers*, as a title of Nobility, but *Freemen*, as "equals."

† Laws of Henry I., c. ix., § 4.

‡ See "Government by Commissions," p. 123, *note*.

§ Laws of Henry I., c. xxxi., § 6 & 7.

nation of the ancient Laws of England throws a full and clear light upon the gradual adoption, in place of the full folk-mote, of the plan of the modern jury, or limited but still sufficient number, who should, by taking the duty in turns, relieve the whole number of freemen (bound, under penalty, to attend every folk-mote) from a detained attendance on every occasion; such attendance necessarily becoming longer according as population, and therefore the number of causes to be adjudged, increases.* The efficiency of the administration of Justice may thus, under proper safeguards, become fully assured, while the inhabitants are never in danger of being called from their private occupations for a longer time, in each year, than accords with the most moderate estimate of the duty and responsibility which each man owes the State.

Traces of limited juries, Committees of the whole, are to be found even in the Anglo-Saxon† Laws and Records. Also in the Constitutions of Clarendon‡ of Henry II.; and in Glanville,§ who wrote in the same reign. But there is ever reason to believe that the bodies thus spoken of fulfilled, chiefly, the functions of the Grand Jury; and that it was not in their power to "make judgments."

It is clear, however, that the present form of Jury gradually grew out the habit of appointing Select Committees to be, as Sir Thomas Smith expresses it even in the time of Queen Elizabeth, "in the place and stead of the country,"‖ —that is, of the whole body of freemen.

In Domesday-Book, that invaluable record of the working of Local Self-Government, innumerable instances are found of

* The increased number of Causes, and the increased population out of which to take, in turn, the Committees in place and stead of the whole, run parallel. The burthen does not therefore increase, if the system is properly worked, however much the actual amount of work to be done may increase.

† See Laws of Edward the Confessor, cap. xxxviii., and Domesday Book, folios 189 & 336 (*b*), and compare with fo. 262 (*b*), &c. &c.

‡ Wilkins, A. S. Laws, p. 330. § Lib. ii., cap. vii.

‖ Commonwealth, Book ii., ch. xxvi.

the verdicts of special "sworn men" of the shire, hundred, &c. Magna Charta supplies a curious and interesting illustration of the growth of the system of the Select Committee in place and stead of the whole folk-mote. By chapter 21 it is declared that if, at the Assizes, "any matters cannot be taken on the aforesaid shire-mote day, SO MANY knights and freeholders SHALL STAY, *of those who have been there at that shire-mote*, as shall be able to MAKE *all the judgments*,* according as there is more or less business." It would not be easy to be more explicit. The whole folk-mote was there the first day, and helped in making all the judgments. To fulfil what then remained unfinished, a sworn Committee was appointed. And the same thing is seen, in another shape, in the Statute 35 Henry VIII., c. 6; in which it is, in conformity with the Common Law, declared that, if the whole of the summoned jury is not present, the number shall be made up out of the by-standers [tales de circumstantibus]; thus recognising the fact of the duty and responsibility of all in the matter, although, for convenience, a special sworn Committee is appointed.

The number of this sworn Committee varies. Records exist of almost every number, from 86† to 4‡. The numbers 53, 42, 36, 24, 12, 6, and many others, might be shown to have been used. There never has been, nor is now, any magic ascribed, by the Common Law, to the number 12.

There is a remarkable passage in Domesday Book§ in which, in the compass of seven lines, three separate statements are found, and in different phraseology, as to something done, in the Folk-mote, by certain men. The first has it, that certain "*men testify* that [a place named] does not pertain to any manor." The second has it, that "*the men of the Shire say*" that a person named has no claim. The third has it, that "*the men who have been sworn*" speak to a fact as to the ownership of a house. A careful consideration of this interesting

* See before, ch. xv., p. 220.
† Winton Domesday Book.
‡ *Inquisitiones nonarum.*
§ Folio 30.

passage leads to the conclusion that these were certainly not three ways of doing or saying the same thing. Such a slipshod mode of cutting the knot cannot be admitted. It is apprehended that the following is the true explanation of the passage:—The *first* was a matter which certain individuals knew: they gave their *testimony* touching it, as witnesses, in the full Folk-mote; and it was accepted. The *second* was a case within the general knowledge of all the neighbourhood: the Shire-mote spoke to it at once for themselves, and by themselves, without examining any special witnesses. The *third* was a case involving rights of property, which needed considerable investigation: so a sworn Committee was named to investigate it, in the place and stead of the whole shire; and their *verdict* was received. In each case it was the Shire-mote that "made the judgment." This illustration gives a vivid picture of the practical way of doing business at the time.

And this illustration leads to the consideration of another point of great interest. It has been said, with much confidence, by some, that the jury began merely as a body of witnesses. Nothing can be clearer than that this is altogether a mistake. And it is rather an important one to correct, inasmuch as witnesses testify to something as to which *another* is to pronounce the judgment; while the very fundamental element of the jury is that it "makes the judgment." Ample proof in detail on this point might be brought up. It is sufficient, perhaps, to say that, not only have we these witnesses, in the case just cited from Domesday, distinct from the jury, and the same in other cases from Domesday,* but in Magna Charta we have two successive

* There are many proofs throughout Domesday of the *habit* of examining witnesses, who were distinct from those who "made the judgment." Nay, we find, more than once, allusion to the *absence* of such evidence. Thus:—"No one was brought to speak touching these lands; so the Shire-mote set a value on them," (Domesday Book, fo. 166 *(b)*, and see ib. 170 *(a)*). In the "Clamores," many instances are found. Thus, among the Yorkshire Suits, places like the following occur:—"William Park calls his fellows to witness that, while William Malet lived and was Sheriff of York, he was seised, &c." (Domesday Book, folio 374 *(a)*).

chapters (42 & 43) the first of which speaks of the "witnesses produced to prove" a charge; the second, of the "Peers" who are to "judge" the accused.* So, in the Laws of Edward the Confessor, it is expressly said that, if those named have *testified* against a man, he shall clear himself by the *judgment* of the Shire.† "Making judgments" was, as has been seen from the 21st chapter of Magna Charta, the peculiar and high function of the true *jury*.

Some of the principal Safeguards to the sound working of this Jury System, must be next noticed. To understand these, the true origin of that system must be always borne in mind.

The functions of every jury which makes judgments must be discharged in public. It would have been a complete departure from the original character of the administration of justice,—namely, by the freemen, and as one of the duties discharged by them in open Folk-mote,—if the sworn Committee had ever been allowed to do their business in secret. The freemen placed confidence in their peers whom they had appointed a Committee, because, like themselves in Folk-mote, all would still be done openly, and so no unfair play could happen. To work well, then, the jury which makes judgments must always sit and discharge its functions in open courts,‡ "whither all persons may resort, and in no chambers or other private places."§

The right of challenging the jury, that is, of objecting to the whole or any individuals of the Committee to be sworn, is another incident that follows from its origin. It would have been monstrous that, when every man had a right to

* And thus, in the forms of pleading (which have, by a partial view of them, misled writers on this matter) each party pledges himself to "*bring his suit*" [*i. e.* his body of *witnesses*] to support, or to be "*ready to verify*" [*i. e.*, by *witnesses*], each fact he alleges; *but*, as to the trial of and making judgment on it, he "*puts himself upon the country.*"

† Laws of Edward the Confessor, ch. xxxviii.; and see, on this point, "Government by Commissions," pp. 133, 145.

‡ See "Government by Commissions," pp. 138, 139.

§ 2 Inst. 103.

claim the judgment of the full Folk-mote, any man should be called on to submit to be judged by a Committee of which some members were known to him to have prejudged the case. The *Right of Challenge* is, then, a necessary incident to the honest application of the Committee system, which we call a "jury:" it is an inherent point in its well-working.*

The reason of the *Unanimity* required in the jury is found in the same original source. When the function of making judgments by the full Folk-mote was, for the convenience of all, let be discharged by a select Committee, it was felt that it would be unsafe, and a relinquishment of that fulness of discussion and consideration which it is the great end of all parts of the system of Local Self-Government to secure, if a mere majority of that Committee should be held to be enough. It may take five hours to come to a unanimous decision; but the truth is obviously infinitely more likely to be sifted and got at, and justice to be done, in this manner, than by letting a majority decide in five minutes. There will of course always be a majority, one way, the first moment the jury is called on, however intricate the case. The true wisdom is to devise such means as shall supply what, in the full Folk-mote, is the natural result of greater numbers; and as shall compel, among a number thus limited, thorough investigation before decision. Such is the object of the Common Law everywhere; and the requiring a unanimous verdict is the mode very wisely adopted in the working of this sworn Committee, or jury system.

It is another incident springing from the same origin of the Jury, that it is the judge of the *Facts*, to which the *Law* is to be applied. The Jury has not the power delegated to it by the Folk-mote, of making the Law, as it is the function of the Folk-mote itself to do. It is true it may declare the Law and the fact together if it please.† It is indeed its real duty

* See "Government by Commissions," p. 155, &c.

† Littleton's Tenures, § 368; and see before, p. 115. See also Bushell's case, Vaughan's Reports, p. 150.

to do so.* But this is, simply, because the Law is, or ought to be, within the knowledge and understanding of every man. The Jury may never make a new Law for the occasion.†

The Jury is not bound by the evidence given before it, nor by the opinion of any Judge upon that evidence. The very principle of the Institution, as a part of the system of Local Self-Government, is, that those shall have the making of the judgments who, from their own circumstances, are most likely to be able to form sound conclusions. "To what end," says Chief Justice Vaughan, "is the Jury to be returned out of the vicinage whence the cause of action ariseth;—To what end must hundredors be of the Jury, whom the Law supposeth to have nearer knowledge of the fact than those of the vicinage in general;—To what end are they challenged so scrupulously to the Array and Poll;—To what end must they have in many cases the view, for their exacter information chiefly;—if, after all this, they implicitly must give a verdict by the dictates and authority of another man? A man cannot see by another's eye, nor hear by another's ear: no more can a man conclude or infer the thing to be resolved, by another's understanding, or reasoning."‡ And Fortescue well remarks:—"These things shall not be done by the will and sayings of strange or unknown men, but by the oaths of good, of worshipful, and of credible men, neighbours to the parties, in whom the same parties have no cause of challenge or mistrust."§ And in another place, after declaring that "verily no man can be safe in body or goods, whom his adversary may overcome in any cause with two unknown witnesses of his own choosing and bringing up,"—which is an accurate description of the method of summary jurisdiction,—he adds:—

* See Coke, 4 Inst., 41:—"When a jury do *doubt* of the Law," &c.

† See, hereon, "Parallels between England and Hungary," p. 60.

‡ Bushell's Case, (which see throughout,) Vaughan's Reports, p. 148.

§ Chapter xxxii. How the same principle runs through all the parts of the system of Local Self-Government is thus illustrated. A passage already quoted, p. 174, will occur to the reader:—"Shall we be prescribed by them what to petition for," &c.

"but such mischief and inconvenience cannot be wrought by witnesses that make their depositions in the presence of twelve credible men, neighbours to the deed that is presently in question, and to the circumstances of the same; *which also know* the manners and conditions of the same witnesses, especially if they be nigh dwellers; and know also whether they be men worthy to be credited or no. And, further, all those twelve cannot be ignorant in those things that were done by and among their neighbours. For I know more certainly the things that are done here in Berry, where I am now remaining, than those things that are done in England. Neither do I think that things can be kept from the knowledge of a good and honest man, being done nigh to his house, and almost under his nose, be they never so secretly done."*

This point is one of great importance. And it assumes a greater one when attention is recalled † to the fact of the unlawful habit in which Judges have, in modern times, indulged,—and increasingly so within the nineteenth century,—of presuming to direct Juries in their verdicts, and of taking on themselves to say what evidence is, or is not, sufficient for the Jury. Many cases illustrative of these wholly unlawful assumptions on the part of Judges, and of the mischiefs following, might be quoted. It is enough now not to have passed over in silence so clear and mischievous a breach of so important and fundamental a principle.

The difference between the meaning of two words, as commonly used, though both but illustrations of the Jury practice, should be here explained. An "Inquest" is, in strictness, a matter of inquiry only; where, without any charge, or even, necessarily, ground of charge, against any person, known or unknown, it is necessary, for the ends of justice or the common weal, that the truth should be got at as to some given state of things. The Coroner's Inquest on view of a dead body is one illustration of this;‡ an ordinary "Writ of In-

* Chapter xxviii. † See before, pp. 117, 118.

‡ See "Laws of England relating to Public Health," by the present writer, pp. 58—60.

quiry," to ascertain the amount of any debt, is another. What is more commonly called a "Jury," is when there is some direct charge or claim made by one party against another, in respect to which both parties have "put themselves upon the country,"—that is, submitted themselves to the judgment of their fellows.* In the case of every "Inquest" it is, as in the case of every "making of judgment," inherent to the body making it,—the sworn jury,—to have full authority to summon before it every person and evidence that may seem to it to be necessary. It is in strange ignorance or wilful violation of this rule, that Coroners' Juries have sometimes had obstacles thrown in the way of the very proper requisition, that a suspected person should be brought before them, and be present during the inquest. This obstacle has been raised by Justices of the Peace, assuming to have powers of Summary Jurisdiction; a class of functionaries who ought to be especially careful of such an exhibition of the unconstitutional nature of the powers they may hold by Statute Law (for they have none at Common Law). This particular power is one which they assuredly do not possess; and the attempt to exercise it is as much a violation of the authority of the Coroner, and of the inherent right of the Jury, as it is of those principles of Common Law which require every man to have the opportunity of answer to any charge made against him.

Every observation already made as to the value and importance of Local Self-Government in general, applies to Trial by Jury in particular. It is unnecessary, therefore, to enter into any special enumeration of the high importance of an institution which appeals to the self-respect, the consciousness of duty and responsibility, of every man, at the same time that it is the only practical means of protecting a free people from the arbitrary judgments of irresponsible functionaries.

It is part of the policy of centralization to annihilate the jury system,—the most active part of the Institutions of Local

* See "Government by Commissions," p. 146.

Self-Government that now exists in England. Very much has been actually accomplished in this direction; and with daily increasing mischief, and loss of the sense of self-respect and responsibility. It can need but for the foundations and true nature of the system itself to be thoroughly understood for all honest men to unite in resisting firmly every further attempt in this direction, and to demand the restoration of it in all its vigour and extent. It must be remembered that it is no form. It is a reality. Centralizers seek to reduce it to a mere form by so narrowing its exercise that men become unfamiliar with its duties. It is thus that every practical application of the system of Local Self-Government is, one after the other, sought to be undermined. It is self-evident that, as in every other illustration of that application, the more frequent and extensive the activity of this Institution, the more excellent will be its working.

It cannot be necessary to dwell, again,* on that very transparent trick of centralization which, under pretence of giving the *optional means* to do a given thing, that continual *habit* of doing it by which alone its well-doing and the good resulting from it can be assured, is craftily taken away; and so the first essentials and fundamental principles of free Institutions are undermined. The Jury System, like every other part of the system of Local Self-Government, has been sought to be sapped by this insidious means.†

The only substitution for the doing of Folk-right by freemen among themselves, is the introduction of arbitrary discretion. The value, over such a system, of the Jury system, must be self-evident to every man not altogether unfamiliar with the fundamental principles on which only truth can be

* See before, p. 136.

† Among other instances, the (so called) County Courts Acts may be referred to; by which summary jurisdiction is made to supersede the only system consistent with free institutions; but the specious pretence is made of parties being *allowed* to summon a jury under given circumstances. This is, of course, a mere mockery. See after, p. 281.

discovered. The more minds are at work, the more sure is every side to be seen, and so truth got at. The jury supplies two things: *first;* a sufficient number of minds to ensure the viewing of every point from a variety of aspects: *second;* minds already in a condition most likely to be able to appreciate rightly the bearings of what matters are brought before them. No man but a stranger to feelings of self-respect, heedless of the characteristics of truth and the requisites to its reaching, indifferent to moral independence and the sense of social duty and responsibility, would listen, for a moment, to the proposition that the making of judgments by a jury of peers shall give way to the making of judgments at the arbitrary discretion of one or a few, not peers, but nominated and unchallengeable. On this point it will be enough to quote the admirable language of Chief Justice Vaughan.—"I would know," says he, "whether anything be more common than for two men, students, barristers, or judges, to deduce contrary and [illegible] conclusions out of the same case in Law? And is there any difference that two men should infer distinct conclusions from the same testimony? Is anything more known than that the same author, and place in that author, is forcibly urged, to maintain contrary conclusions, and the decision hard which is in the right? Is anything more frequent in the controversies of Religion, than to press the same text for opposite tenets? How, then, comes it to pass that two persons may not apprehend, with reason and honesty, what a witness, or many, say, to prove, in the understanding of one, plainly one thing, but, in the apprehension of the other, clearly the contrary thing? And this often is the case of the Judge and Jury."* There is, however, this very important difference; that the Judge is one mind, running pretty much in a beaten track, and within a very special range, and, so, unfamiliar with all the numberless circumstances that enable those familiar with them to come

* Bushell's Case, Vaughan's Reports, p. 141.

to a just conclusion; the Jury is several different minds, of varying habit, but all more or less familiar (and, the more active the system is, the more familiar) with the class of circumstances in question, — and therefore infinitely more likely than any Judge to "make" just "judgment," and to "do *Folk-right*."

CHAPTER XIX.

SUMMARY JURISDICTION.

THE opposite to Trial by Jury is Summary Jurisdiction. The principle of Trial by Jury has been seen to be, shortly, that Free men can only, consistently with their Liberty and the doing of true folk-right, consent to have their affairs managed and disputes settled by and among themselves; least of all can they submit to be dictated to, and have disputes settled, by functionaries set over them, not of their own choice, but by Crown appointment. The principle (if principle it can be called) of Summary Jurisdiction is, that men shall hurry on in pursuit of material selfish ends, staying not nor turning to fulfil any of their social, moral, or political obligations, but shall be content that others, independent of them, and put over them, and irresponsible to them, shall manage for them their affairs and settle their disputes. It is the practical abandonment of the first and most essential rights, duties, and responsibilities of freemen. It is allowing "judgments to be made" by those who have different sympathies, different prejudices, different interests from themselves; and who are, therefore, unable to understand the motives of action, and consequently the actual moral right or wrong of any act; and unable to understand, also, the consequences of the course which the law may take.

Trial by jury, soundly worked, gives safe security that no case shall be decided rashly or hastily, nor on insufficient premises. Summary Jurisdiction is the means by which the rash and hasty judgment of one or two is made to take the place of all safety and security.

Summary Jurisdiction is the supplanting of the assured

protection to liberty, property, and free action, and the hindrance to wrong-doing, which the Common Law affords, by a system of Arbitrary Discretion,—which renders the punishment of wrong-doing a lottery, but takes away every assured protection to liberty, property, and free action.

Trial by Jury submits "all causes to be measured by the golden and straight metwand of *the Law*,"—the Common Law, by which freemen only are judges of their fellows. Summary Jurisdiction delivers over all causes "to the incertain and crooked cord of *Discretion*,"*—the arbitrary discretion of irresponsible functionaries.

"The discretion of a Judge," says the great Lord Camden, "is the law of tyrants. It is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, and passion. In the best it is oftentimes caprice. In the worst it is every vice, folly, and passion, to which human nature is liable."†

It is against this caprice that the Common Law has so jealously provided. It is this caprice which Summary Jurisdiction sets up as the only arbiter.

No man, whether a freeman or a villein, says Magna Charta, shall be amerced save only by the judgment of his fellow-freemen, by the oath of honest and law-worth men of his neighbourhood: no freeman shall be taken, or imprisoned, or disseised, or outlawed, or banished, or in anywise destroyed, nor will we pass [judgment] against him, nor send [execution] against him, unless by lawful judgment of his fellow freemen, and by the law of the land.

Every man, says the theory and practice of Summary Jurisdiction, shall be amerced at the arbitrary discretion of Crown-appointed irresponsible functionaries: any freeman may be taken, or imprisoned, or disseised, or outlawed, or banished, or in anywise destroyed, by judgment passed upon

* Coke, 4 Inst., 41.

† Judgment in the case of Hindson *v.* Kersey, printed separately, 4to., 1771, p. 53.

him without any appeal to his fellow-freemen, but at the arbitrary discretion of functionaries set over him. The only "Law" is to be judge-interpreted, that is judge-made, Law.

"Every oppression against law, by colour of any usurped authority, is a kind of destruction," says Coke.* All authority is, constitutionally, usurped, which is repugnant to the spirit of the Common Law: and *Law*, in any true sense, has no existence when Summary Jurisdiction prevails.

"No restraint, be it never so little, but is imprisonment," elsewhere says Coke.† The system of Summary Jurisdiction is the means of subjecting any man to "restraint" at the idle caprice, malice, or vindictiveness of any other man. Truly is it "the Law of Tyrants."

Long ere the system of Summary Jurisdiction had approached the extent it has since reached, Blackstone well said of it that "it has, *of late*, been so far extended, as, if a check be not timely given, to threaten the disuse of our admirable and truly English trial by jury, unless only in capital cases."‡ Again he says,—and the passage is, on more accounts than one, well worth weighing:—"Another branch of summary proceedings [in addition to the Excise, Customs, &c., already named by him, and heretofore also] is that before justices of the peace, in order to inflict divers petty pecuniary mulcts, and corporal penalties, denounced by Act of Parliament, for many disorderly offences; such as common swearing, drunkenness, vagrancy, idleness, and a vast variety of others, for which I must refer the student to the justice-books, *and which used to be formerly punished by the verdict of a jury in the Court-Leet.* This change in the administration of justice hath, however, had some mischievous effects; as, the almost entire disuse and contempt of the Court-Leet, and Sheriff's Tourn, the king's ancient courts of Common Law, formerly much revered and respected." And, after enumerating other incidental mischiefs, he adds:—"From these ill consequences

* 2 Inst., 48. † Rushworth, Vol. i., p. 529. ‡ Vol. iv., p. 281.

we may collect the prudent foresight of our ancient lawgivers, who suffered neither the property nor the punishment of the subject to be determined by the opinion of *any one or two men*; and we may also observe the necessity of not deviating any farther from our ancient constitution, by ordaining new penalties to be inflicted upon summary conviction."

Notwithstanding this warning, the system and the mischief have gone on widely spreading, through the means of unlawful statutes, got upon the statute-book by men eager to stretch to the uttermost the patronage and influence of governments, and regardless alike of the Common Law, Magna Charta, and all the rights and liberties of free men. New means of accomplishing these unhallowed objects are easily found. Each step paves the way to another: and a "flattering preamble" is never wanting. However peculiarly the matters in question must clearly be within the knowledge only of those who come within the true definition of a Jury, and cannot be properly appreciated even by the most conscientious instruments of Summary Jurisdiction, it matters not. Juvenile offences, bankruptcy, insolvency, nuisances, contracts;—all are taken, alike recklessly, from the only means of adjudication which can possibly be sound and satisfactory; and are made into means of swelling the host of Government appointments and Government influence.* Thus is all consciousness of self-respect, all sense of social and moral duty and responsibility, being continually weakened more and more in the people who submit to have functionaries unlawfully set over them, for the doing of what it belongs to them, as freemen, to do for and among themselves. Few persons have any idea of the extent to which the liberties, property, and free action of every man have, by gradual and stealthy steps in this direction, been got to be practically put under the arbitrary control of the executive and its subordinates. But there is no man who has not, on some occasion or other, been

* See before, p. 107.

startled to find the fact realized in reference to some matter in which he has himself had a more or less near interest.

Every one of the steps of centralization is an advance towards the entire substitution of Summary Jurisdiction for the wholesome methods and fundamental principles of the Common Law. Whether it be Justices of the Peace, Commissioners of Excise, Customs, Poor Law, Public Health, Buildings, Bankruptcy, Insolvency, Small Debts, &c. &c.,—"the distresses and the prosperity of the country" are each alike eagerly grasped at, as means to extend crown influence and patronage, and to rear up arbitrary discretion in the place of Law.

How great the mischiefs daily done, how huge the wrong perpetrated, no man can know; and none can estimate who has not paid some attention to the working of the system. Cases of Justices' justice not unfrequently attract the attention of the Press. But hundreds of cases daily occur which attract no such attention, but in which grievous oppression is done, without check and without responsibility. In a vast number of cases the victims of this system of organised oppression are the poor, who are unable to raise their voices to be heard by man.* Let any one enter a so-called "Justice-room," either in the Metropolis or in any other part of the country; let him watch the disposal of a few cases;—and then judge whether he should not hide his head for very shame that the land which boasts a noble Common Law, to protect poor and rich alike, should ever have allowed the principles of that Common Law to be over-ridden and trampled down upon by this arbitrary system of Summary Jurisdiction. It is not a matter of the integrity of the Judge. Chief Justice Vaughan has already answered that.† It is the inherent, uneradicable vice of a system fitted only for a people which is a stranger alike to the spirit and the practice of Free Institutions.

* See also before, p. 185.

† Close of last chapter.

One of the earliest attempts at introducing Summary Jurisdiction into England was made in the reign of Henry VII. Loud and deep are the indignation and horror of Lord Coke at this attempt: and prophetic is his warning against allowing such attempts to be repeated.

His marginal summary is:—"A mischievous act with a flattering preamble;" and the following is his account of the matter.*

"There was an Act of Parliament made in the 11th year of King Henry VII., which had a fair flattering preamble, pretending to avoid divers mischiefs, which were; 1. To the high displeasure of Almighty God; 2, the great let of the Common Law; and, 3, the great let of the wealth of this land. And the purview of that Act tended in the execution contrary, *ex diametro;* namely, to the high displeasure of Almighty God; the great let, nay the utter subversion of the Common Law; and the great let of the wealth [*weal*, that is, good ordering] of this land, as shall manifestly appear." He then gives the Statute. This recites that Justices of the Peace have no jurisdiction except to *inquire*, by the oaths of a jury, of matters within their jurisdiction. This is highly important. The modern notion of a Justice of the Peace is exactly the reverse. It embodies an unlawful usurpation "under colour of law." This Statute of Henry VII. goes on to empower the justices to hear and determine the class of cases therein mentioned (and which does not approach, in extent and variety, the cases now dealt with by Justices of the Peace, to say nothing of Boards and Commissions) without the intervention of a Jury. The Statute is guarded against unproved charges and other oppressions, by provisions not found in the modern class of similar Statutes; but, on the contrary, carefully *provided against.*

The following are Lord Coke's observations on the working of this Statute.

"It is not almost credible to foresee, when any maxim or fundamental Law of the realm is altered, what dangerous in-

* 4 Inst., 39.

conveniences do follow; which most expressly appeareth by this most unjust and strange Act of 11 H. 7: for hereby not only Empson and Dudley themselves, but such Justices of Peace (corrupt men) as they caused to be authorized, committed most grievous and heavy oppressions and exactions, *grinding of the face of the poor subjects* by penal laws, by '*Informotion*' only, without any presentment or trial by jury,—being the ancient birthright of the subject,—but to hear and determine the same by their discretion.

"This Statute of 11 H. 7 we have recited, and showed the just inconveniences thereof, to the end that the like should never hereafter be attempted in any Court of Parliament; and that others might avoid the fearful end of those two time-servers, Empson and Dudley. 'Let those who tread their steps, dread their end.'"

It should not be omitted to be remarked here, that those who fulfilled the functions of Justices of the Peace,—even when it was not dreamed that such Justices had any discretional power, or other than that of having needful inquiries made *before* them [always *coram*, never *per*],—were formerly elected, in accordance with the universal principles and spirit of the Common Law, by the freemen themselves. It was not presumed to attempt to set functionaries over freemen by crown appointment. Many illustrations of this might be given. It is enough to cite Magna Charta itself, which alone contains several instances. A striking one is the clause which precedes that already quoted as requiring so many freemen to stay, after the first Shire-mote day, as should be necessary to make the judgments. The clause alluded to declares that those who are to hold the Assizes,—not themselves to "inquire," or "adjudge,"—are to be two justiciaries,* "and four knights, who are to be chosen in each shire by the men of the shire."†

The forwarders of Centralization oftentimes seek to cover from view the arbitrary and irresponsible nature of the powers they grasp at, by use of the phrases "responsibility to the

* See before, p. 106

† See further, "Government by Commissions," pp. 84, 135, 136; and Coke, 2 Inst., 703, &c.

Crown," and "responsibility to Parliament." These pretences are so transparent as to seem to need little notice. Yet they undoubtedly impose on many. Responsibility to the Crown is a thing which cannot exist or be recognised in a free country. It is to the people only that any persons intrusted with authority are to be responsible. The pretence of responsibility to the Crown merely means the sheltering of wrong-doing, and the covering of the wrong-doer from all reach of redress.* Responsibility to Parliament, as to any offices and functions whatsoever, means, in the absence of the Constitutional Safeguards, but the mere screening from any responsibility at all: and, however sound the action of Parliament, the cases to which this language is usually applied are cases with which it does not belong to Parliament to intermeddle either directly or indirectly, and which it neither does nor can, therefore, keep within watch or responsibility. The pretence is but a crafty and mischievous delusion. It is by the practical activity of institutions of true Local Self-Government alone that any real efficient action or real responsibility can ever exist.

Every observation made on Summary Jurisdiction applies equally to it, whether it pretends to deal with matters social or political, criminal or civil. Much has been done in every one of these ways within the nineteenth century. The great idea of the age is,—not the due discharge of social and moral obligations; the doing of folk-right, and the implanting sentiments of social duty and responsibility;—but the getting eased of every burthen of duty and responsibility; the keeping down, by enforced means, from the appearance on the surface, of what is offensive to the so-called refinement of the age, and to the conventional civilization of certain classes; and the preventing men eager for self-aggrandizement from being obliged to take the trouble to exercise such ordinary prudence and circumspection in the management of their own affairs that, in case of any unsettled or disputed claim, they may be able safely to leave the adjustment of it, as between freemen,

* See before, p. 108.

to their fellow-freemen. On every point, and in every respect, it is the enforcing and simply arbitrary system which the fear-struck or purely selfish man rejoices in, in a state when self-respect and self-dependence are unknown; and not the adjusting and equal system, by which freemen, with a manly sense of their duties and responsibilities, will always desire to have the law administered with all jealousy, but with all charity, and folk-right to be as manfully dealt as it is manfully claimed.

Sufficient illustrations have already been given of the application of Summary Jurisdiction in matters of Social and Political Relation.* Many instances, besides those already touched on, might be given of the application of Summary Jurisdiction in matters both Criminal and Civil. Two will be sufficient;—each equally obnoxious to the remarks just made, and equally fraught with necessary and wide-extended mischief.

The Juvenile Offenders' Summary Jurisdiction Acts belong to one class. As to the consequences of these it will be enough to quote the opinion of one whose experience entitles it to respect in this particular, especially as that opinion goes against the extension of his own authority. At the April Quarter Sessions, 1850, for the County of Middlesex, Mr. Sergeant Adams, the chairman, thus expressed himself:—"It was thought by the Legislature, that the withdrawal of children from the public courts, and the substitution of a private tribunal and an individual judgment for trial by a jury, would have a beneficial operation upon the youthful population of the country, and tend, not only to diminish the number of criminals, but the amount of crime. But an experience of forty years in the general administration of justice, and an experience of twelve years in that court (in which latter period he had tried 16,000 prisoners, and had carefully watched the career of many hundreds), left in his mind a deep-rooted conviction that the consequences of this summary

* See chapters x., xiv., &c.

jurisdiction would be *just the reverse* of the results anticipated by the framers of the Act of Parliament by which that summary jurisdiction was established."

The reasons which apply in the case of juvenile offenders, apply with far greater force to ages that do not come within the range to which that term is pedantically assigned, but to which the modern system of Summary Jurisdiction is applied in a thousand different ways.

The (so-called) "County Courts' Acts," of 1846, 1850, are an instance of the application of Summary Jurisdiction to civil matters. It is unnecessary to enter into all the evils of a machinery so palpably mischievous and full of ill as this. These Acts cannot be sustained by the slightest show of argument. The cry of "Cheap, cheap," and representations of selfish convenience (regardless alike of responsibility and right), were the means by which the first was got:—the second was got, as usual, to help the self-interests of the functionarism which the first created. For the great result of these measures is, singly, that a large number of fresh appointments are put into the hands of government; and this, in the dangerous direction of keeping in expectant subserviency a profession which can only exist, usefully to the community, by maintaining a thoroughly independent spirit.

The natural and necessary effects of such measures as these County Court Acts, must always be, to raise up numberless different—and all arbitrary—ways of administering what is called justice, in different parts of the land; to give to trick and pettifogging and imposition every possible encouragement; to make the hardest swearer and the most unprincipled man thrive the most, at the expense of his neighbours; and to rear impudent fraud, coupled with truckling subserviency, into the moral qualities most conducive to the successful career of that selfishness which alone has led to, and alone could have tolerated, a system so contrary to the spirit of the Common Law and the obviously only means of "doing folk-right."

Under both these sorts of acts it is indeed pretended that

a jury may be had if wished. This, as already noticed,* is only a part of the crafty means which Centralization employs to undermine free institutions. It is but the hollowest mockery. There is the same difference between the *power* to have a jury if an individual ask for it, and the *necessity* for each case being adjusted by that only sound and truth-reaching tribunal, as there is between the power to hold incidental and uninformed public meetings, and the necessity for regular, fixed, frequent, and accessible folk-motes. The paraded pretence of the opportunity in each case is but the surest means of destroying any reality.

Many superficial observers have been misled, by the name "County Courts," into the idea that these last-named Acts are a restoration of the old system, by which law was, as has been shown in previous chapters, brought home to every man's door. It is hardly necessary to say that a greater fallacy cannot exist. In no one respect have these so-called County Courts the slightest likeness to the true and Common Law system of Local Administration, or to the County Courts [Shire-Motes] which have existed for so many ages.† On the contrary, every fundamental principle, and the whole spirit of the sound Common Law system, are set at naught by them; as these are by every instance in which the liberties, property, and free action of the people are subjected to be dealt with by any shape or degree of Summary Jurisdiction.

* See the last chapter, p. 268, and before, p. 136.

† See Chapter xv., pp. 217—222.

CHAPTER XX.

ACCUSATION AND JUDGMENT.

He who would seek earnestly to reach the truth as to the nature and characteristics of any matter or thing, divides his work always into two parts: *first*, he takes every care to separate the true subject matter itself from all extraneous and merely accidental circumstances,—and this is never by any means the least important part of his task: *second*, he then, but not before, goes on to analyze the so-separated subject matter itself.

What applies to natural philosophy applies to every other matter of inquiry. The canons of truth-seeking are universal.*

The natural instincts of a race of freemen, gifted with a strong vein of good sense, led to the settling down of the Common Law of England into precise accordance with what the profoundest reasonings of philosophers hold to be thus essential.

The Common Law of England declares that, in every case of claim or charge, the claim or the accusation is one thing,—which must be reduced to a specific certainty and stripped of all extraneous matter; the adjudication upon the specific and uncntangled matter thus put in claim, or made as accusation, is another thing,—which must be decided by a separate process. In neither case is the method of Summary Jurisdiction to be allowed, but many different minds are to be directed towards the subject matter; so that the separating, in the first instance, shall be trustworthy, and the judgment to be finally pronounced shall, so far as human wit can reach it, be the truth.

* "Government by Commissions," p. 114.

In matters of charge,—which must affect, always, the reputation, property, life or limb, of a man,—it is peculiarly important that the most jealous care should be taken that this distinctness is maintained. A natural bias of the mind is apt to spring up (as every man of any experience must be fully conscious) from the very act of getting out the defined shape and nature of a mere accusation. The actual merits of the accusation, so got out, can only, with hope of assured truth, be determined by a separate tribunal.*

It was the strong common-sense perception of this that, from very early times, induced our fathers, instead of receiving rude and hasty accusations at the Folk-mote, to have a Committee appointed, charged to examine and report what were real and what only vexatious or malicious accusations; to shape every real accusation into a definite form; and to produce to the Folk-mote that accusation, and the evidence in support of it, for the Folk-mote to pronounce its judgment thereupon. When a second Committee was appointed to "make the judgments," "in the place and stead" of the whole Folk-mote, the reason for the first Committee was certainly not lessened—rather increased. It was therefore retained. And, though both are objects of the ceaseless attack of all helpers-on of Centralization, and the one even from some professed admirers of the Jury system, both *Grand* and *Petty* Jury exist to our own day. And it can only be a strange ignorance of the uses of either, or a subservient spirit unconscious of any aspirations for true freedom, that can ever allow either to be abandoned.

The purpose of the Grand Jury is to testify to the making out of a definitive accusation; to present that accusation, as so made out, with the also clearly separated evidence by which it is supported: and it is for the Petty Jury, uninterfered with by any Judge, to make its judgment upon that so-presented accusation and that evidence.

* These two tribunals, and their separate functions, are well described by Fleta; Lib. ii., cap. 52, § 36.

The Grand Jury is, as will be seen by this account of it, of far higher antiquity than the Petty Jury, though both sprang from a common origin—the noblest that any human Institution can have—namely, the Folk-mote of freemen assembled to administer the Law and do folk-right among each other. The earliest traces we have of the Grand Jury, point out its true functions in as clear a way as the most modern treatise;—indeed considerably clearer; for very much confusion and misunderstanding has grown up upon the subject.

The whole picture of the Folk-mote holden to do folk-right, and waiting for the presentment of their report by its sworn Committee of accusation, is presented to us graphically in the following extract from the Laws of King Æthelred (A. D. 978–1016):—"Let a gemote be held in every wapentake [hundred]:—and let the twelve eldest thanes go out, and the reeve with them, and swear on the relic that is given to them in hand, that they will not forsay [ACCUSE] any innocent man, nor conceal any guilty one."

The office of the Grand Jury, therefore, is that of Public Prosecutor. There are some, indeed, so in love with arbitrary methods and the centralizing system, that they are anxious to see *individual* public prosecutors appointed; altogether ignorant, apparently, that this is a function which the Common Law has provided for being discharged much more efficiently, and in a manner much more befitting freemen, namely, by themselves. The office of individual Public Prosecutor is one which can never work in that wholesome way that the Common Law system,—carried out in its true spirit,—must work. It has all the inherent evils, and is liable to all the objections, that every constitutional writer of any deserved weight has felt to attach to the system of "Informations;"—that is, letting accusation be taken according to the caprice, convenience, prejudice, or "discretion," of a single person or two, instead of after an impartial sifting of the case.

In Magna Charta it is said, that no officer shall *put any man to law* [that is, require him to answer any charge] upon his

single accusation, nor without credible witnesses produced to prove it; and the clause that he shall only be *judged* by his peers [fellow freemen] follows. Numberless other instances might be quoted of the just importance attached to the hindering of any approach to Summary Accusation, as much as to Summary Judgment. Several specific instances occur in Magna Charta, besides those commonly quoted. So also in many both earlier and later records. Thus, by the 25 Edward III., Stat. 5, c. 4, it is proclaimed, as declaratory of the Common Law, that "none shall be taken by petition or suggestion made to our Lord the King or to his Council, *unless it be by indictment or presentment of good and law-worth people of the same neighbourhood where such deed be done*, in due manner, or by process made by writ original at the Common Law; *nor* that none be ousted of his franchise, nor of his freehold, unless he be duly brought to answer, and forejudged of the same by the course of the law: and if anything be done against the same it shall be redressed and holden for none." And the 42 Edward III., c. 3, declares that "to eschew the mischiefs and dangers done to divers of the Commons by false accusers,—which oftentimes have made their accusations more for revenge and private benefit than for the profit of the King or of his people; which accused persons, some have been taken, and some caused to come before the King's Council by writ, and otherwise upon grevious pain, and *against the Law:* it is assented and accorded, for the good governance of the Commons, that no man be *put to answer* without *presentment* (that is, either by his peers), before justices, [*coram*, not *per*] or by matter of record (that is, already lawfully adjudged), or by due process and writ original, *according to the old law of the land.*"

The modern system of Summary Jurisdiction, which altogether confounds accusation and judgment together, and violates every sound principle of each, is in direct antagonism with both these declaratory statutes. There is neither presentment according to Law before a man can be put to answer; nor is he put to answer, afterwards, according to the Common Law, and the principles of common Justice.

What Lord Coke's opinion was of any tendency to such a system has been seen. In another place* he says, still more directly to the present point, though in allusion to the same event:—"*Against this ancient and fundamental Law, and in the face thereof,* I find an Act of Parliament made, that as well justices of assize, as justices of peace, *without any finding or presentment by the verdict of twelve men,* upon a bare *information* for the King before them made, should have full power and authority, by their *discretions,* to hear and determine, all offences and contempts committed or done by any person or persons against the form, ordinance, and effect of any Statute made and not repealed. By colour of which act, shaking this fundamental law, it is not credible what horrible oppressions, and exactions, to the undoing of infinite numbers of people, were committed by Sir Richard Empson, *Knight,* and Edm. Dudley, being justices of peace, throughout England: and upon this unjust and injurious act, *as commonly in like cases it falleth out,* a *new office* was erected, and they made masters of the King's forfeitures."

As "horrible oppressions," but more wide-spread, are done under the modern system of summary jurisdiction as ever were done under the Act of Henry VII. But, as before said, by far the larger part of them touch the poor, who, having no Folk-mote of the freemen to go to, cannot make their voices heard;† but every one of whom is entitled at Common Law, and by the law of Humanity and Justice, to as careful a jealousy of his reputation, character, and liberties as the richest and most powerful. But this difference is a characteristic one between Centralization, the modern system, which works through the means of Summary Jurisdiction,—and Local Self-Government, the Common Law-System, which works through the means of Presentment and Trial by Jury. And, as in the instance Coke gives, so in all modern instances, "it falleth out," that *new offices* are created for the benefit of those who live upon the

* 2 Inst., 51.

† Also those *made dependent,* who *dare not.* See before, p. 184.

crushing of the liberties and rights of their fellow-men. The spirit of Centralization is the same in all ages.

"At the Parliament," proceeds Coke, "holden in the first year of Henry VIII., this Act of 11 Henry VII. is recited, and made void, and repealed; and the reason thereof is yielded, for that, by force of the said Act, it was manifestly known that many sinister and crafty, feigned and forged* informations had been pursued against divers of the King's subjects, to their great damage and wrongful vexation. And the ill success hereof, and the fearful ends of these two oppressors, should deter others from committing the like; *and should admonish Parliaments that, instead of this ordinary and precious trial according to the Law of the Land, they bring not in absolute and partial trials by discretion.*"

And elsewhere, touching on this point of "informations," and in reference to another Statute which was passed to hinder extravagance in liveries and badges to servants,—matters of fact, in which, if in anything, a mere "information" would assuredly be enough,—after stating how, at the discretion of the judges, an information might, by that Act, be held enough, Coke remarks:—"this Act is deservedly repealed."†

Modern Acts of Parliament,—so beaten out is all true practical regard for the first essentials of free Institutions,—go the length of expressly declaring Summary Informations, as well as Summary Judgments, to be quite enough.

The true practical difference between Accusation and Judgment, and so the difference of the functions of the Grand and Petty Juries, is well put in the following passages of Lord Somers. A Coke, a Somers, and a Camden were not to be deluded into sacrificing free Institutions at the shrine of any "fair flattering preamble."

"In the whole proceedings in order unto Tryal, and in the Tryals themselves, the Thing principally intended, which several persons are severally, in their capacities, obliged to

* These are the actual words of the Statute, which is in English. See folio ed. of Statutes, 1 H. VIII., c. 6.

† 4 Inst., 41.

pursue, is, *the discovery of Truth.* The witnesses are to depose THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH. Thereupon the Counsel for the King are to prosecute; the Grand Jury to present; and the Petit Jury to try. These are several Offices, but all to the same End. 'Tis not the *Prisoner*, but the *Crime*, that is to be pursued. This primarily; the Offender but by consequence. And therefore such Courses must be taken as may discover that, and not such as would ensnare him. When the Offence is found, the impartial Letter of the Law gives the Doom; and *the Judges have no share in it, but the pronouncing of it. Till then, the Judges are only to preside*, and take Care, that every man else, who is employed in this necessary Affair, do his duty according to Law. So that, upon result of the whole transaction, impartial Justice may be done, either to the Acquittal or Condemnation of the Prisoner."*

"The *Grand Jury* is obliged to search into the whole matter that any ways concerns every case before it, and all the offences contained in it; [into] all the criminal circumstances whatsoever, and into everything howsoever concerning the same. * * The guilt or innocence of the parties put upon their trials, and the evidence given, are the only objects of the inquiries of the *Petty Jury.* It is not their work, nor within their trust, to search into the guilt or crimes of the parties whom they try [that is, to rake these up, and found accusations on them]: they are bound to move within the circle of the indictment made by the Grand Jury, who are to appoint and specify the offences for which the accused shall be tried by the Petty Jury."†

* "The Security of Englishmen's Lives," &c. Ed. 1766, p. 70.

† Ib., pp. 86 & 87. Immediately connected with this point is the one before noticed (pp. 117, 118, 266), but which cannot be too often insisted on, of the wrongful interference of the Judges with the functions of the jury. In 1850 a case of the sort (the trial of the Birds before Mr. Justice Talfourd,) occurred, which attracted much attention. But the just observations of the Press fell in the wrong direction. The fault was not, and is not, in the Law, but in the unlawful

One of the noblest maxims of the Common Law of England is, that every man is to be presumed innocent till proved guilty. In accordance with this is all the course of lawful accusation and judgment. No man is to be made an object even of public charge until grave consideration, by the Committee of Freemen, has satisfied them that a defined offence has been committed, and that defined circumstances connect some person or persons with it. These are then stated to the Petty Jury, which makes its judgment. "By the intent and nature of the powers given unto Grand Juries they are by their oaths obliged, and by their institution ordained, to keep all injustice from entering the first gates of our courts of Judicature, and to secure the innocent, not only from punishment, but *from all disgrace, vexation, expence, or danger.*" *

How different the modern system! Any man may, at the caprice of any other, or at his careless, malicious, or vindictive instigation, be at once branded before the world as infamous; "destroyed"† in his liberties and reputation; and put to endless vexation, harassment, and cost. Such Cases do actually occur every day. There is in fact, and can be, under the system of Informations, of summary accusation and judgment, no safety for any man whatever against the ignorance, carelessness, caprice, or malice of any neighbour or enemy, or against the interested officiousness of any police officer or other hired functionary.

Every man who has ever entered a modern police court knows that, as soon as a charge is made, the accused is, practically, assumed to be guilty. The proof of innocence is thrown, in fact, upon him, instead of the principles of Magna Charta and

usurpation by the judge upon the province of the jury; to which latter it belongs, *and to which only*, to determine the weight and value of the evidence given, and, so, the sustainability of the counts of the charge. Other nearly similar cases have since happened, wherein the doing of Folk-right by the lawful instruments of "making the judgments" was like to have been hindered by the unlawful interposition, by Judges, of technical niceties and unmeaning quibbles.

* Ib., 87.

† See Coke, quoted before, p. 273.

of the Common Law being carried out, and a clear accusation being first established, and then judgment being required to be separately made,—both being done by fellow-freemen only.

It is often said that an investigation before a Magistrate, in those cases which afterwards go to a Petty Jury, fulfils the function of the Grand Jury. The assertion shows that the function of the Grand Jury, and the first principles of justice, are altogether misunderstood. Besides the insuperable objections already established, against any charge being made or adjudged on by a single and not competent person, the very objects for which a Grand Jury exists are not fulfilled. The offence, and its circumstances, are not investigated with a tender regard that no charge shall be made against any person before the public until the Committee, *i.e.* the Grand Jury, are satisfied there is a case to connect a given party with it. Every case, before a Magistrate, is always prejudged, some person being, from the first, the criminal pointed at before the public. To speak in homely phrase, the odds are against such person from the beginning, however innocent;—and the course of absolute justice is necessarily made less pure, as well as many an innocent man, who succeeds in proving his innocence, having had to suffer, in the mean time, the "disgrace, vexation, expence, and danger," of the position.

These are evils which call loudly and deeply for earnest attention. The sound remedy is not difficult to reach.

The last point leads to some remarks on the subject of *false accusation*. There was nothing, formerly, held so villanous as the false accuser. He had to make heavy compensation to the accused. It is impossible that this should be done under a system of Summary Jurisdiction;—the spirit and practical effect of which is to hold out a premium to random and reckless accusation. A principle so important for the protection of society becomes forgotten therefore. Nay, worse,—every possible difficulty and hindrance is, by statute, thrown in the way of obtaining any redress whatever from those who are made to have an actual self-interest in making false accusa-

tions. Any one who looks at the Excise Acts, Customs Acts, Police Acts, Justices' Acts, or any other of the numberless ones of the same class, will find this too fully and startlingly verified.

The old Anglo-Saxon Laws might be cited in very many places, in illustration of the care taken to prevent rash and reckless accusation, and to enforce compensation for it. But it will be more within appreciable time,—for so ancient is the Common Law of England that many men, especially those who cover their self-seeking aims under liberal pretences, affect to despise the liberties it protects for the very reason of their antiquity,—if two Statutes of the time of Edward III. are referred to; and these two will be enough for the purpose.

By the 37 Edward III., c. 18, it is declared, that whereas, notwithstanding the Great Charter, divers persons make false suggestions, as well for malice as otherwise, whereby the King is often grieved, and divers freemen of the Realm put in danger, against the terms of the same Charter: and it is, therefore, enacted that all they which make such suggestions shall find surety to pursue their suggestions; and, if the accused be acquitted, the accuser shall incur the same pain that the other should have had if he were attainted. In the next Parliament it was added, with express reference to the Statute just cited, that if he that maketh the complaint cannot prove it against the Defendant in due course of Law, he shall be commanded to prison, there to abide till he hath made gree [compensation] to the party for his *actual damages, and also for the slander* that he hath suffered by such occasion; and, after, shall make fine and ransom to the King. For the Law of England has not, as Somers well remarks, been "less careful for the *reputation* of the subjects of England than for their lives and estates." And he adds, what applies with too painful truth to the whole modern system of Summary Accusation:—"What is this but an artifice of slandering men, it may be, of the most unspotted conversation; and of abusing authority, not so much to find men guilty, as to make them infamous? After this ignominy is fixed, what judgment can

the auditors, and from them the world, make, but of high probability of guilt in the party accused, and perjury in the jury?"*

It is unnecessary to dwell at all upon the special functions of the Petty Jury. These are what were more particularly dwelt on in the chapter on "Trial by Jury," it being the Petty Jury which has to "make the Judgments." But it is of the highest importance that every man who sincerely wishes the welfare of his country, the due administration of the law, and the real peace and good of society,—and not merely the enforced keeping of its ill parts smouldering just below the surface,—should clearly comprehend the distinction between Accusation and Judgment, and feel the importance of having that distinction jealously maintained. The system of Summary Jurisdiction is hostile to any lawful and truth-reaching method of either. It is the most effectual machinery that could be employed to thwart and corrupt the course of justice, and to cause discontent and dissatisfaction with the administration of the Law, and to ensure practical inefficiency in the results. Like every part of the system of Centralization, it is at once unlawful, degrading, demoralizing, and disorganizing.

Lord Somers, in the work already quoted, has some observations so precisely pertinent, not only to the whole subject of the Jury System, Accusation and Judgment, and the stealthy strides of Summary Jurisdiction, but to all the crafty devices of Centralization, that they may be well quoted in conclusion of this chapter.

"Whosoever," says he,† "being in the like places, may design, or be put upon, the like practices, will do well to consider [former] examples, and not to think that he who obliquely endeavours to render Grand Juries useless, is less criminal than he that would absolutely abolish them. That which doth not act according to its institution is as if it were not in being. And whoever doth without prejudice consider this matter, will see that it is not less pernicious to deny

* "The Security," &c., p. 59. † P. 77.

juries the use of those methods of discovering truth which the law hath appointed, and so by degrees turn them into a mere matter of form, than openly and avowedly to destroy them. Surely such a gradual method of destroying our native right is the most dangerous in its consequence. The safety which our forefathers for many hundreds of years enjoyed, under this part of the law especially, and have transmitted to us, is so apparent to the meanest capacity, that whoever shall go about to take it away, or give it up, is like to meet with the fate of Ishmael, to have every man's hand against him because his is against every man. *Artifices of this kind will ruin us more silently, and so with less opposition, and yet as certainly, as the other more open oppression.* This only is the difference; that one way we should be slaves immediately, and the other insensibly: but with this farther disadvantage too, that our slavery would be the more unavoidable, and the faster riveted upon us, because it would be *under colour of law.*"

CHAPTER XXI.

COMMISSIONS OF INQUIRY.

One of the most mischievous forms which the contempt for the Common Law has assumed in modern times, in England, in the direction of Summary Jurisdiction, has been the assumption, by the Crown, of a power to issue "Commissions of Inquiry."

It has already been pointed out * how mischievous are all unlawful attempts to make use of the factitious influence of the Crown to achieve encroachments. Commissions of Inquiry are as much an example of this as Commissions pretending to have executive or legislative functions.

The nature and effects of all Commissions of Inquiry have been elsewhere † so fully treated of, and the unlawfulness of the system so fully shown, that it is needless to enter here, at any length, upon those points. The present object is to show how such a system stands with reference to the great practical questions of Local Self-Government and Centralization.

The true function of the Crown has been shown to be ministerial only; that, in order to put the law in execution, and to discharge any other of its duties, it can only *take lawful steps to put in motion the lawful means and Institutions of Local Self-Government.* ‡ It can create no new Institution, Court, nor Jurisdiction whatsoever.

The Crown is sworn to maintain the law. "I was sworn,"

* Chapter V., p. 108.

† See "Government by Commissions," Book I., ch. 3; and Book II., ch. 1.

‡ See before, pp. 98, 111.

said even King James I., "to maintain the law of the land; and therefore had been perjured if I had broken it."* But the Crown is made to break its oath whenever it is advised, or permitted, to issue a Commission of Inquiry on any matter whatsoever.

It has been well put, that "the King commissionates persons to do what himself cannot by Law do in person. And consequently they do not receive their authority from him only, but from the Law of the Realm, which authorizes him to commissionate them: and, where the law does not empower the King to issue a Commission, he can issue none to exercise jurisdiction." †

The greatest lawyer England ever produced declares, in entire conformity with what have been already shown to be the fundamental principles of the English Constitution, that "COMMISSIONS OF NEW INQUIRIES ARE AGAINST LAW; AND OUGHT NOT TO BE PUT IN EXECUTION." ‡

But so little are men now in the habit of looking at the Constitutional bearings of questions, and at their relations to the vitality of Free Institutions; and so much does it save the trouble of proving a case by legitimate means to take the short cut of thrusting a special view of it upon the reception of the country "by authority;" that numbers of men, professing to be in advance of the age, hail this unlawful means of obtaining their ends, and take every opportunity of putting it in action.

Some conventional modes of speech have contributed greatly to this state of things. It is usual to speak of any act done in any King's reign as done by him,—even although it is known to have been against his individual will. The King's name embodies the idea of the national unity; and is properly enough used when it may not lead to misconception. And it is the same with any other authorities that may be ministerially employed. Thus the Shire-mote is called the

* Speech, 1616.

† *Philonomus Anglicus* on K. James's Ecclesiastical Commission, London, 1687, p. 13.

‡ Coke, 3 Inst. 165.

Sheriff's Court;—not that the sheriff is the judge of it, for the freeholders are so. In the same way, what is done under the presidency of any special person is often described as done by him. Very serious errors have, however, hence arisen. And none greater than in respect to Domesday Book. That invaluable record is usually spoken of, by those who ought to be better informed, as having been made by Royal Commissioners. Nothing can be more contrary to the fact. The doing of such things by Royal Commissioners and Crown-appointed Inspectors is a mischievous invention of recent times, and one which William the First and his successors never dreamt of, and never would have dared to attempt. Domesday Book in fact contains a record both of the law as adjudged by the people, and of the law as administered by the people, in the Institutions of Local Self-Government already explained, and then existing throughout the whole land in full vigour and activity. "Inquests" * and inquiries were made, as they always may be lawfully, *before* the lawfully appointed Justices: they were not, and they never lawfully can be, made *by* them. This distinction is of the very highest importance. It lies at the very root of the whole practical question of Free Institutions; of the whole difference between mere names and true realities; between the sound and wholesome administration of the law and its unsound and vicious administration; between the well-working of our political and social Institutions and their ill-working.

Attention has already been called to what is the lawful function of Justices of the Peace; † namely, to *inquire* of the matters within their jurisdiction *by the means of* good and law-worth men, lawfully sworn to the inquiry, who are to present what they shall duly find. And so Somers has been seen to say, in conformity with true principle, most important not to be forgotten, that "the judges have no share in the trial but the pronouncing of the doom: till then the judges are only to preside, and take care that every man else who is

* See before, p. 266. † See before, p. 276.

employed in this necessary affair do his duty according to law." The sheriffs in their tourns,* and the Justices in Eyre † in their circuits, all stand in exactly the same position. Not one of these important officers ever had the shadow of a jurisdiction himself to *inquire* into any facts, either alleged or desired to be learned about. Much less has any one of them the shadow of a lawful power to delegate to any other the function of inquiry.

The Crown stands in precisely the same position. It can inquire into nothing itself. Still less can it delegate any such power.

But are the means to be shut out of gaining information on any matter? Assuredly not. The Common Law has provided the most complete and reliable means that human ingenuity ever devised;—infinitely more practical, as well as more perfect, than any Crown-appointed Commission can supply, even were the latter not unlawful and opposed to the spirit of Free Institutions.

The Institutions of Local Self-Government existing over the whole land are the means which the Common Law has provided for the purpose of all and any such inquiries. It will be self-evident to every one who has read the earlier chapters of this work, that these Institutions afford a true and reliable means to this end,—and one ever present and ready for efficient action.

The opinions of many thousands of men, familiar with every possible aspect of the case all over the land, are thus got, after full and responsible investigation, in every place, and therefore carrying a true authority, instead of the picked evidence which happens to favour the views or fit the crotchets of a few irresponsible Crown-appointed individuals. The former are got, too, without expence to the public, and without tedious delay; both of which are among the necessary consequences of the usurped system of Commissions of Inquiry.

Lest any one should be so unacquainted with Constitu-

* See before, pp. 219, 220. † See before, p. 231

tional History and so in love with arbitrary proceedings, as,—notwithstanding what has been already proved of the practical efficiency of Institutions of Local Self-Government,—to profess to doubt the practicability of such means of inquiry, it will be well to state that many records of such inquiries, so made, and with the utmost minuteness,—far greater and more methodical than any "Commission of Inquiry" can ever reach to,—happily still exist. *Domesday Book* itself is but an example of Inquiries thus simply but most comprehensively worked out. The *Hundred Rolls* and the *Inquisitiones Nonarum* are other examples of the same thing. And no one can even cursorily glance at any of these records without feeling how incomparably more practical a character they carry throughout than do any of the pompously paraded, but always unreliable, *Reports* of the unlawful Crown-appointed Commissions of Inquiry. Everything is presented in a tangible form, as well as in a reliable form. These afford sound material for the legislator to work upon. There never yet was any result of the labours of a Crown-appointed Commission of Inquiry which afforded such sound material.

Let any one look at the matters which are specifically enumerated, as within the ordinary charge of every Institution of Local Self-Government,* and he will see how comprehen-

* See before, p. 231. It will be useful, as well as interesting, to give here a copy of the essential parts of one of the lists extant of the ordinary "Articles of Inquiry" thus coming regularly before every Sheriff's Tourn, &c. — "Whether the Roll is complete. Whether any have gone away under any circumstances of suspicion. Whether all on the Roll have come up to the Folk-mote. Touching burglars, thieves and robbers, forgers, murderers, house-burners; and the accessories and harbourers of any of these. Touching outlaws, and returned convicts. Touching treasure-trove, murders, and stolen goods found and kept. Touching gaol-breach, rape, abduction; and wrong-doers in parks, burrows, warrens, &c. Touching maimings, assaults, false imprisonments, and other breaches of the peace. Touching usurers, traitors, &c., and their harbourers. Touching petty thefts. Touching the hue and cry wrongly raised; or, if rightly, not followed up: who raised it, and by whose default suit was not

sive, while these Institutions were active, was the habitual range of inquiry, and how efficient the result of such a system must be.

Matters within the range of ordinary inquiry would thus be always under investigation in the regular, fixed, and frequent meetings of the Institutions of Local Self-Government. These very matters lie festering now, hidden and unknown, till some explosion takes place, simply because those Institutions are let lie in inactivity, or superseded by unlawful Summary Jurisdiction. But, happily, though thus lying in inactivity, they are capable of being promptly reanimated, for the discharge of all such functions, at any moment, and with as great ease as the summoning of a jury at any ordinary Assizes.

As to other matters, on which, as special need arises, information is desired, the practical means exist no less clear and simple. It has already been stated that, at Common Law, no man can, for his own benefit, do that which is or may be a mischief to his neighbour. But the Common Law dealt practically with this matter, as with all others; and, among its numberless most valuable, but—since the encroachments of Centralization—forgotten methods, was the application

followed up. Touching landmarks broken, removed, or altered. Touching water-courses turned or obstructed. Touching ditches, walls, water-banks, pools, or anything of like sort, meddled with, damaged, or otherwise, to any man's hurt. Touching ways and paths wrongfully obstructed or narrowed. Touching false weights and measures. Touching watch and ward not duly kept, and highways not well maintained. Touching bridges and water-banks out of repair," &c., &c. "*And many other articles.*"—*Fleta*, Lib. II. cap. 52. Many other and varying lists might be quoted: but all would prove the same thing; namely, that home to every man's door there is, by Law, and according to the English practice of true Institutions of Local Self-Government, the continual opportunity brought, by speedy and costless means, of righting every grievance, and hindering every wrong. What Public Prosecutor could, in any respect whatever, be so efficient, either to keep check on wrong-doing, or to keep men up to the mark of their social duties and responsibilities? Is the nineteenth century truly so far advanced in civilization as is pretended?

of a certain writ, called the Writ *ad quod damnum*.* The whole purpose of this writ was that, instead of the Crown presuming to authorize the Summary Jurisdiction of any Commission of Inquiry of its own appointment, or such power being wielded by any Justices, Board, or Commission of any sort, full inquiry should, in every case, be made by the law-worth men of the neighbourhood as to the merits of the matter, and as to *whether and how* the doing of any proposed thing would be cause of any loss or damage to any one. Such a writ is a striking illustration of the true practice of Free Institutions. Its application would be the true cherisher, in each man, of the consciousness of Rights and Responsibilities owing to the state and to his neighbours; the true warder-off of any subservient bowing to "authority," and pinning faith to got-up cases. The existence of the ancient writ *ad quod damnum* affords, in itself, the finest evidence of the true spirit of the Constitution of England, and of how inherent to that Constitution are the Principles and Practice of Local Self-Government.

Should it be suggested that matters needing inquiry may sometimes arise to which these *ordinary* means will not apply, the answer is ready. Though no one familiar with the *Hundred Rolls*, and the sort of Inquiries at the Sheriffs' Tourn, &c., &c., can fail to perceive that the occurrence of such extraordinary occasions must be extremely rare; yet, should they occur, the lawful course is equally obvious. If the need exists, it can be shown to Parliament to exist. The very purpose of Parliament is to make the judgment in such matters; and it is peculiarly its province to determine on the existence of the alleged need. And be it observed, that, unless a clear need can be thus shown, it will always be self-evident that the pretended inquiry is a mere job, by which it is sought to give occupation, at the public expense, to men either idle and needy or seeking to make out some case for the self-aggrandizement of the few at the expense of the many.

* See before, p. 116, note.

Let Parliament, then, determine whether the alleged need exists or not. Having determined that it exists, two courses are open. The one is, an inquiry by a Committee of the House. The other,—more speedy, efficient, practical, and economical by far in many cases,—is the authorization, by Parliament, of the appointment of individuals, for the special occasion, in the same capacity as the Justices in Eyre; namely, to lay before every Institution of Local Self-Government (either personally or by authentic communication) the matter in question; and then for that matter to be investigated,—and the result of the investigation systematically returned to them, by those sworn to the inquiry in each place, just as was done with the Hundred Rolls, and as is now done at every Parliamentary Election. There are some classes of matters to which one of these two methods will always apply better than the other. There are no matters to which one or the other will not apply in a manner, and with a result, infinitely more satisfactory and reliable than any of those unlawful, packed, and partial inquisitions called Commissions of Inquiry.

It may be here remarked, that the very right practice always heretofore was, when a matter of extensive local interest was concerned, that the officers *before* whom the Inquiries were to be made were elected by the body of the Shire, for instance, *by* the law-worth men of which Shire the needful individual inquiries were to be made. *

Centuries ago our fathers felt, and declared, that the modes thus pointed out are the only modes and circumstances by and under which the rights of freemen can be maintained and the truth can be got at, whether in matters of special *inquiry*, or in matters touching the trial of any claim or charge. The nature of those circumstances remains the same at this hour; and must ever remain unchanged while human nature shall endure. The laws of truth may be contemptuously trampled on, and the fundamental laws of the realm openly violated, by

* See "Government by Commissions," pp. 135, 136.

a system of packed Commissions of Inquiry and of packed Administrative Commissions; but the principles which our fathers proclaimed and insisted on can never die. And, without the practice of them, true Free Institutions do not, and never can, exist.

It must never be forgotten that it is not the mere accumulating of masses of facts that is advancing the truth. A much more important consideration is, the mode and spirit in which the facts are accumulated, the separated distinctness of the point and course of inquiry,* and the object for which the inquiry is made. † Mountains of blue books are but an ingenious device for preventing the needle of truth from being found amid the bottle of irrelevant matter. Institutions of Local Self-Government afford, as has been proved, the only possible means by which the mode and spirit of dealing with any questions shall be insured a legitimate and wholesome course. As to Crown-appointed Commissions of Inquiry, it would seem as if every essential to the discovery of truth, and provided for by the lawful and constitutional system, had been noted, and then this unlawful system carefully devised so as to evade every one, without exception, of those essentials and provisions.

When the available and efficient means provided by the Common Law for getting at the truth on any matter needing investigation, are abandoned, or unlawfully superseded by other modes unconstitutional and irregular, as well as inherently defective, the inference necessarily is, that the end is not the getting at the truth, but, by means of the suppression and culling of evidence, to make out a predetermined case. The honest man, even if assured that the predetermined result will, in a given instance, be in support of his own opinions, is bound, as a respecter of the Law, and of the rights and responsibilities of freemen, and of honesty and truth-seeking, to oppose the application of such a means.

* See the beginning of the last Chapter.

† See "Government by Commissions," p. 112, &c.

He will know that, besides the unwholesome example of contempt and violation of the Law and of honesty when it happens to be thought convenient; what is thus winked at, to-day, under cover of pretended good motives and objects, may be used to-morrow, by some one else, with precisely the same plea, to rob us of what is most dear.

There is no expression used in the Petition of *Right*, the Statutes repealing the Courts of Star Chamber and of High Commission, the principle of which, and much of the special reference in which too, do not apply precisely to modern Commissions of Inquiry as well as to all Administrative Commissions. What has been said on the subject of *Informations* in the foregoing chapters, finds also its precise application in the instance of every *Report* presented by any Commission of Inquiry.

He who would understand this question has further to be reminded, that it is not even pretended that any Commission of Inquiry can take any compulsory steps to obtain evidence. This amounts to an admission that all such Commissions are altogether illegal, and that advantage is but sought to be taken by them of the factitious authority of the Crown, illegitimately exercised, fraudulently to impose upon the credulity of the ignorant and the subservient. It is impossible to escape this conclusion. Any man may inquire into any matter as well as he is able, without a Commission from the Crown: but, when he does it without asking such adventitious aid, he proves his earnestness: when he wants the irregular support of that factitious means, he proves his want of earnestness. It is a mere pretentious, and therefore only contempt-worthy, means of seeking to delude the public.

But observe the practical consequences. Every man who has studied the first elements of truth-seeking, knows that the only means of getting at the truth on any matter are, by looking at every side of every fact, and by having and using every means for a thorough investigation into every incidental illustration. In all inquiries relating to human unrecorded actions and affairs, the first essential is, the power of

compelling the giving and production of evidence. If this does not exist, if it is all purely voluntary (as is admitted to be the case under "Commissions of Inquiry"), all is necessarily *ex parte*. It becomes, practically, a premium upon misrepresentation and malicious and fraudulent aspersion; a device for most effectually getting up a one-sided case in support of a foregone conclusion. And such is, in point of truth and fact (however sought to be disguised), the object, and such has always been, and always must be, the practical result, of these unlawful Commissions of Inquiry.

But, besides not leading to true results, the practice of these Commissions of Inquiry is accompanied by most mischievous moral and social evils. That it must naturally lead other men to set the law at defiance when they see those in high places, and who are specially sworn to observe and maintain it, thus set it at defiance, has been already remarked, and cannot be too often remembered. But, beyond this, the effects are morally debasing. The whole tendency is to make men neglect the duties and responsibilities which belong to every citizen, and to expect everything at the hands of functionaries. Aye; even the exertion of thought and inquiry is to be saved, that the more undivided attention may be given to eager selfish material seekings. To save themselves the trouble of setting their own minds to inquire *ad quod damnum*, or, in any other way, to grapple with any matter in question, men take what comes to them dressed out in a garb,—though, as already proved, a merely meretricious one,—of "authority." Here then, again, as in every one of its devices, the crafty stealthy course of Centralization is seen working. And the more Institutions of Local Self-Government are thus helped to be thrown out of use, the more will the usurped pretensions of "authority" prevail. This is one part of the modern system of State *education* (a very expensive one too) by which the minds of men are sought to be drilled to run in that course which shall best suit the purposes of functionaries, or expectant functionaries, who look at their country as but the garden whence honey for their own

hive is to be drawn. There can be no more ingenious device of its kind for accomplishing these ends, and none which has actually proved more successful, than the employment of Commissions of Inquiry.*

"To sum up the whole matter as connected with the Principles of the Jury System and of Accusation and Judgment, and with the violation of those Principles by Summary Jurisdiction in all its forms, and by all Administrative Commissions and Commissions of Inquiry as some of them:—By the Common Law of England no authoritative Inquiry can be made, affecting, directly or indirectly, property, person, or free action, nor can any adjudication be made on any charge or claim of any nature or kind soever, except by a Folk-mote or, "in place and stead" thereof, by a sworn jury of the fellow-freemen of the parties or party whose interests, property, person, or free action are or may be affected, or against whom any claim or charge has been made: to which jury is inherent the power to compel the attendance of all necessary persons and witnesses, and the production of all necessary documents, and to enforce both under the most solemn sanctions against false witness: and of which jury the following are essential requisites;—that its members shall, by their neighbourhood to the scene of the subject-matter of inquiry, have most knowledge or probable knowledge of the bearings of whatever evidence shall be brought up in respect to it; and be altogether personally indifferent between any parties; that so such jury may a true judgment give after hearing all the evidence, and, if it be a case of claim or charge, after hearing both sides and the witnesses of each, if any be produced. And the right of challenge is an inherent incident to the whole proceeding.

Every part of the whole system of Summary Jurisdiction, in all its numerous modern ramifications, is a distinct violation of every one of these requisites. In every case a power is assumed to take steps affecting the interests, properties,

* See "Government by Commissions," p. 18; and see ib., pp. 193, 194, &c.

persons, or free action of men, without the lawful and necessary inquiry,—and, if need be, presentment,—by a jury in the first instance; and to adjudicate finally without the trial of each case by a jury, indifferent and impartial, and liable to challenge.

As to Commissions of Inquiry, in particular, that Minister will alone fulfil his duty to his country and the Crown, who, when urged to issue such a Commission, whatever the pretence may be, shall advise the Crown that it is bound by its oath, sworn to observe and maintain the Law of the Land, and that all "such Commissions, and all others of like nature, are wholly and directly contrary to the Laws and Statutes of this realm." *

* Petition of Right.

CHAPTER XXII.

LAW REFORM.

Much has been attempted, and with no little parade, in the way of Law Reform, within the first half of the 19th century. But, practically speaking, little of lasting good has been achieved. To any one who has studied the Constitutional Principles on which the system of the Law of England is founded, the reason of these failures will be obvious enough. No means have been taken to go to the root of the mischief, and to ascertain its true bearings: the measures adopted have been empirical and experimental only.

If there is one thing more than another in which empirical and merely experimental treatment is to be dreaded, it is in dealing with the administration of the Law. Any measures taken, to be useful or lasting, must be founded, not on the superficial aspect of some evil which is, in truth, merely symptomatic, but on a careful study and apprehension of fundamental principles, and with immediate reference to the latter.

Many professed "Inquiries" have been set a-foot on various branches of Law—criminal, civil, and practical. But in what manner have these been set a-foot? In the first place, by a violation of the Law itself, in the appointment of Commissions of Inquiry.* In the second place, by the appointment of professional Lawyers to the work. No doubt these have all been able men, and appointed from an idea of their fitness, as judged by the one or two who took upon

* See, as to one of these Commissions, "Government by Commissions," p. 207.

themselves, illegally, to appoint them. But, unhappily, there is no profession so exclusive as the legal. There is none of which the pursuit is so completely treated by the rest of the world as a *terra incognita*. This fact itself lies very near the root of the whole mischief. Of all subjects that can be looked at, there is none which ought to be less a mystery than the Law. What may be well in matters of trade or art,—whose products can be supplied by the maker to the user, complete and ready for his use,—cannot be so in the case of Law. The *Law* of a land is the code which is presumed to be the guide for the men of that land in their social relations. It is what every man is held bound by; and he can do no act which is not either protected by it or a violation of it. Of the first importance is it, then, clearly, that the Law should be in such a state as to be no craft, no mystery; needing no unapproachable priesthood set apart to expound or administer it; but open and plain to every man's comprehension; simple in its Principles, and clear and unintricate in the modes of application of those principles. But most especially ought these to be the characteristics of the Law in England, the fundamental Principle of whose Constitution is, that all Law springs from the people and must be administered by the people.

There will always be some men more able than others to present, in logical form, and with due clearness and appropriateness, the points of an argument and case; and who, therefore, may justly obtain the truly honorable position of being especially the maintainers of the Law, by helping to support the right with their advocacy and to expose the wrong. But the position of such men can never, wholesomely to society, depend upon their keeping up the appearance of a craft or a mystery which the uninitiated cannot understand. It must, on the contrary, depend on the clearness with which they help to make understood what might otherwise be more or less intricate or obscure.

Were there an earnest desire to grapple with the subject of Law Reform, the work would not, then, be begun by appoint-

ing men alone to any exploration upon it whose very calling lies in carrying on the vicious part—the mystery—of the Law. However high-minded and honorable, there will be an insensible tendency in such men to do what will *keep the Law a mystery*, whatever Reform may be apparently accomplished. The true and only means to set to work will be to get together,—in a Parliamentary Committee, for example,—some men who have specially studied the Principles of the Constitution and the fundamentals of the Common Law; but, together with them, a greater number of plain, sound, clear-headed men, not Lawyers by profession, but, as citizens, bound by the Law and bound to know it; and whose business in such a work it shall be to point out all that is to them intricate, incomprehensible, wrapped in mystery, pure jargon; and not to rest satisfied till it has been shown how,—if it have, under all its meaningless disguises, any true meaning at all,—this can be reduced, both in dress and practice, to its original simplicity, in reference to the fundamental Principle which it truly carries out.

This may seem a hard task to set men to, who have never studied the Law. But the harder the task seems, just in that proportion is it the more needful that it should be undertaken. It is unhappy that the Constitution of the Country and the Principles of Law should be so little objects of general study as they are, being obviously some of the first things that every man should know. But this is, in itself, greatly owing to the mysterious guise the whole matter is made to put on. Certain it is that Law Reform will never be anything but a plaything and a delusion, so long as it is left to Lawyers alone to devise and accomplish it.

At the bottom of the whole of the Legal system of this country there are to be found a few simple, leading, but fundamental principles. In the empirical, uneasy restlessness for Law Reform, the artificers too seldom trouble themselves to trace their quarry home; but strike on, heedless and unknowing whether what they are doing is merely removing an excres-

cence, or pulling down a fabric and tearing up the foundations.

It is unquestionable that very many excrescences have grown up, as well in the theory as in the practice of the Law of England. This has arisen from the two sources of over-legislation,—which is but another name for bad and mischievous legislation,—and, quite as much, from the modern worship of mere collections of recollections which, though but judges' dicta, are taken as the Law, without reference to the principles on which, if sound, they must be founded. It has before been necessary to remark on Judge-made Law. Judge-interpreted Law is, necessarily, Judge-made Law. Practically speaking, the actual Law is always subject to the will of him who is entrusted with its interpretation. Hence the only Law of a free people must always be the Common Law. Hence the importance attached by the Common Law of England to the administration of the Law resting wholly in the hands of the people. It is a necessary consequence that, so long as, by institutions of true Local Self-Government, the administration of the Law is, effectively, in the hands of the people, they will take care to keep it in such a state of simplicity and clearness that they shall neither grope in the dark, nor sacrifice their own true functions to the dictation of a Judge. The functions of the Jury have been shown to have been long being gradually encroached upon by Judges. They are being continually more and more encroached upon; and that, in matters so obviously within the sole functions of the Jury, that strong illustrations are hence afforded of the progress of Centralization. And hence in itself arises a very large proportion of the actual intricacies in the theory of the Law, the cost and tediousness in its administration, and the natural disgust thereat of right-minded men. The Common Law system of administration is essentially simple, cheap, and speedy. * Every matter in which the actual administration of the Law is otherwise than simple, cheap, and speedy, is

* See before, p. 229.

an evidence of departure from the true principles of the Common Law.

The artificial excrescences thus grown up are not, necessarily, difficult to be got rid of; and the main principles on which the sound legal system of England hangs, might easily be reduced to a few simple heads. The secret of the whole will lie in restoring the principles and practice of Local Self-Government to their proper place, so that every case shall be decided by the common sense of practical men, upon its actual merits, unclouded by a miserable jargon of technicalities or a wretched system of unmeaning quibbling. *

Every case has its merits; that is, its right and its wrong. Whether it be a contract for 5s. or for £50,000, there must be merits to it, to be judged by the same broad principles; and which plain practical men, habituated to inquire into and distinguish between right and wrong, will be able to understand. If a system is to step in,—between the demand and the plain dealing with the merits,—and, under the name of "points of Law" or anything else, stand betwixt the actual merits and the doing of right, it is simply oppression,—by however high-sounding names it may be disguised, or under whatever costly and unmeaning forms and processes wrapped up. And this is precisely the view the Common Law has always taken of the matter, and in which it has always dealt with it, till Centralization has stepped in.

It has been already shown that the Common Law formerly dealt with all causes on the spot. It never had any great affection for Westminster Hall. Law was administered, as it ought now to be, regularly, and frequently, in every hundred, and in every shire, and in every borough. It was administered speedily, but considerately,—for an experienced jury settled every question; efficiently, but cheaply,—for it was a part of the felt duty and responsibility of every man to take, unpaid, his turn upon the jury by which the law was adminis-

* The same remark applies, did space allow of its illustration here, to the simplifying of the transfer and titles of Real Estate.

tered between the freemen; and without technical obstructions,—for freemen, dealing folk-right between freemen, look to the merits, and not to technicalities and forms and quibbles. A true Common Law Jury is, in truth, a Court of Arbitration, by men of practical good sense, familiar with the circumstances of such cases, and accustomed to the class of duty, and feeling the responsibility of *it*; and who, for the reasons before given, * have a likelihood of coming at the truth which no single arbitrator can ever have.

It must always be highly desirable to get every case in its simplest and most definite form before a jury. This has already been shown to be the great object of the Institution of the Grand Jury. It is in this that originated the whole of that only scientific part of the common practice of the Law (relating to civil matters) which is called *special pleading*; the object of which is, to extract, out of every question, by means of the statements and admissions of the parties themselves, what is done in criminal matters (where, for liberty's sake, no man is allowed to inculpate himself) by a Grand Jury. It seeks to discover, amid all the statements of both sides, some definite and material points of fact, distinctly asserted by one side and as distinctly denied by the other, on the merits of which the case shall go to the jury to decide. But this course, so wisely designed, has opened the door to the most terrific abuses, and has become availed of, by the practitioners in the Courts of Westminster Hall, as a means of ingenious hair-splitting and refinement, in which the husk is very carefully and cleverly handled indeed, but the kernel is, unhappily, too often altogether forgotten in the process. This is another instance of the mischief of interfering with the province of the Jury and making the Law into a mystery.

Every step that has been ever taken to undermine institutions of true Local Self-Government,—in which folk-right is done between man and man speedily, cheaply, and satisfactorily,—has been a step towards entangling the administra-

* See Chapter XVIII.

tion of the Law in technicality, and making it a mystery. In direct violation of the Common Law, and of every ancient Statute, and of all the ancient wholesome practice, the great mass of causes became, by these gradual steps, transferred to Westminster Hall. And, as men never love to lessen their own jurisdiction, it would have been surprising, indeed, if the judges and practitioners there had not taken good care to keep all causes there to play with, as long as possible, before letting them go down to be tried before the country. The whole system of *Demurrers* grew up;—unintelligible jargon to mere men of sense, but by which the Courts constituted themselves into a sort of Grand Jury,—only a very expensive and slow one,—in civil causes; and, at the same time, usurped, in a vast variety of ways, the functions also of the Petty Jury.

Without further detail, it is important to understand that there is no matter of complaint touching the present state of the practical administration of the Law, that is not capable of being traced through illustrative stages up to some clear source, at which source it was pure and understandable. Only by so tracing it can it ever be reduced back again to a satisfactory condition.

There is no question that the whole may be simplified, even far beyond the idea of any of those who have empirically taken up the subject of Law Reform. But the guiding idea must be,—to reduce it to a condition in which it shall not be a mystery, but a practical reality, available to those who use it, and whose assent to it the Common Law declares to be essential.

The case of Bankruptcy is one which strikingly shows the mischief of empirical legislation. Few subjects underwent more legislative tinkering in the first half of the nineteenth century than this. But no satisfaction was given to the public. There is no Principle whatever to be found running through the pedantic legislation that was empirically put forth, and perpetually being altered. While it became enormously costly, it failed altogether, either to secure honest

claims or to prevent fraud. And why? Because it converted the whole dealing with the subject into an organized machinery of Centralization. Matters most peculiarly within the functions of a jury of practical business men were handed over to Crown-appointed Commissioners, whose whole habits and education were, necessarily, such as particularly to unfit them, however conscientious, for the proper appreciation of the conditions of such cases. Summary Jurisdiction was made, in this, as in so many other matters, to usurp the place of the fundamental principles of the Common Law. Dissatisfaction was the natural result; harsher measures, still more summary jurisdiction, and increased multitudinous pedantic legislative provisions, under the name of "Consolidation," have been the only remedy that could be devised!

The mischiefs and entanglement created by modern law-making have been already noticed. Long ago did the clear-headed Coke remark, ere the Statute Book had begun to approach, through empirical legislation, to its present bulk, that to make, out of all the Statutes in force, "one plain and perspicuous law, divided into articles, so as every subject may know what Acts be in force, and what repealed, either by particular or general words, in part or in the whole; or what branches and parts abridged, what enlarged, what expounded; so as each man may clearly know what and how much of them is in force, and how to obey them;—it were a necessary work, and worthy of singular commendation."* And that other means to keep all written Laws simple, and to make them known, which consists in the old practice of the proclamation of them, is well declared by him to be "an excellent course, and worthy to be restored."† Whitelocke has some remarks strikingly in accordance with those of Coke, as well as confirmatory of other points which have been maintained above. After saying, truly, that our "ancestors used not to make many [written] laws, and those which they did

* Preface to 4 Reports, p. ix.

† 2 Inst. 526; and see before, p. 135, &c.

make were commonly in short and clear expressions,"* he adds:—"I remember the opinion of a wise and learned statesman and lawyer, that multiplicity of written laws do but distract the judges, and render the law less certain: that, where the law sets due and clear bounds betwixt the prerogative royal and the rights of the people, and gives remedy in private causes, there needs no more laws to be increased, for *thereby litigation will be increased likewise.*" He then goes on:—"It were a work worthy of a Parliament (and cannot be done otherwise) to cause a review of all our statutes; to repeal such as they shall judge inconvenient to remain in force; to confirm those which they shall think fit to stand; and those several statutes which are confused, some repugnant to others, many touching the same matter, to be reduced into certainty, all of one subject into one statute; that perspicuity and clearness may appear in our written laws; which, at this day, few students or sages can find in them."†

It will be remarked that neither of these writers commits the blunder, common in our day, of suggesting the attempt to reduce the *Common Law* to heads and chapters.

Highly important parts of Law Reform are included in what has been already said on the subjects of Common and Statute Law, Modern Law-making, and the Constitutional Safeguards; as well as on Trial by Jury, Summary Jurisdiction, and Accusation and Judgment. The entire existing system of Petty and Quarter Sessions must be done away with before the administration of the Law can be brought back again into a condition worthy of freemen, or truly efficient.

From all that has gone before, every observant reader will have perceived that the whole system of Chancery,—vexatious, harassing, costly, and delaying as it is,—is utterly unknown to and in antagonism with the Common Law, both in principle and in fact. It is a pure excrescence, which certainly

* See before, p. 136. † On the King's Writ, vol. i. p. 409.

never had to it, nor has now, the consent of the people, nor of other than, in a very literal sense, "those using it." It is an entire growth of Centralization, and of a gradually crept-on usurpation.

The cry for "cheap Law" has, in a mercenary age, when all high sense of duty and responsibility is smothered beneath selfishness, been the chief argument used in reference to Law Reform. How narrow the range of view taken, and how unsatisfactory the results, are not, then, to be surprised at. The practical steps taken, losing sight, either through ignorance or design, of all simple and practicable arrangements, have been but made the means of fastening innumerable irresponsible functionaries all over the land; while little indeed has been done in the way of cheapening Law,—and that little badly, and very mischievously in its consequences. The County Courts Acts have been already noticed; and their violation of the first principles of the administration of Justice among freemen has been pointed out.*

Most heartily would it be matter of rejoicing if a sound and efficient system were to be realized for the speedy and easy settlement, by local tribunals, of all matters of charge, and of dispute between man and man. Such a system, founded upon principle, would not be difficult; while it would, even as to the point of cheapness—and still more so as to that of time—be far more satisfactory and efficient than the empirical (so-called) County Courts. Moreover, its authors would not stultify themselves by drawing arbitrary lines at this or that kind or age of crime, or at sums of either £20 or £50; but would include all crimes and ages, and all sums, whatever the amount. It must, however, be remembered that it is by usurpation, and by the gradual invasion of the liberties of Englishmen, that the falling into disuse of those local tribunals which formerly existed, in full efficiency, throughout the whole land, has happened. Shall, then, the free development of energy and resource be further

* See before, p. 280.

endangered,—shall the very fundamental basis on which alone Free Institutions can rest, and human progress depend, be further shaken,—by the monstrous and empirical remedy of giving to the nominees of the Crown, under cover of a flattering preamble, a Summary Jurisdiction over the fortunes, properties, and reputation of every man in England? This is what is done by such measures as the Juvenile Offenders Acts, or the County Courts Acts.

In every civilized community, nothing can be more important to the fulfilling of that which is the first object of the existence of a political society—namely, the affording full scope to the exercise of the free and unshackled energies of every man—than the existence of easy and simple means for the satisfactory adjustment of any disputes which may arise between man and man. The cry of the middle of the nineteenth century is, "Cheap, cheap;" and it was under the flattering preamble of that cry that the (so-called) County Courts Acts were urged on. The above is, however, the obvious point of view from which alone the matter can be rightly looked at. That the adjustment of any dispute shall not be costly—that is, shall not itself entail a further hampering and shackling to the individuals concerned, by depriving them of the certain means of bestowing their efforts—is merely one of the self-evident incidents which will necessarily follow a sound system. When the special cry of cheapness is thus raised, therefore, it only shows in how empirical and barren a manner so important a matter is being dealt with, and adds another testimony to the extent of that degrading Mammon-worship at whose shrine men become, under the influence of Centralization, so ready to offer up soul and body, health and hope.

If the reader will recall the passages quoted in the chapter on the practical forms of true Local Self-Government, especially the Declaratory Act of Henry III., he will immediately perceive how easily a simple plan might be practically realized, without cost to the public, by which the administration of the Law, both criminal and civil, would indeed return

home again to every man's door, and be there administered regularly, frequently, speedily, and costlessly. And, when the increase of population, since the time this system was practically in use, is considered, it will be perceived how very small a portion of each man's time,—how very few hours in the year,—would be taken up, were a sufficient number for a jury taken, in turn, from the roll of freemen, and set to serve, as of old, in the honorable work of administering folk-right between their fellow freemen.* The important moral and social results which would necessarily accompany this renovated system are obvious. And Summary Jurisdiction, with all its caprice and mischiefs, would be at an end in more than one important department of affairs between man and man. These tribunals would be really popular, in the best sense of that term. They would not be, as the modern (so-called) County Courts are, practically private, except to litigants. They would be supported by the true respect and confidence of the public, and have other voices raised in their behalf than the mere factitious expression of opinion got up by the solicited Petitions of a self-interested army of functionaries, living upon, and therefore desiring the permanence and spread of, a system which is based on the violation of fundamental principle; which is unsatisfactory in practice, and demoralizing in results.

* See before, Chapter XVIII., p. 260.

CHAPTER XXIII.

EDUCATION.

THERE are few words which have been more abused in modern times than "*Education.*" But if there is anything that needs definition, and a clear comprehension of what is meant, it is this.

Education, to be of any true value to individuals and to society, must clearly be practical, and not merely formal. And Education,—the drawing out, developing, of the faculties of man,—to be real, and not a mere contemptible and mischievous sham, must mean that which so operates upon individuals as to give the greatest original and free expansive power to all the faculties. It is a treacherous falsehood if the name is used but to cover means by which to drill the man into a mere machine, and to stamp all his course of thought and action into a set mould, and keep him in a round of mere conventionalisms.

True Education will have reference, however, not so much to the individuality of the man, his selfish seekings, as to his relations to his fellow-men.

What most needs education in man is, not memory, but understanding; not the habit of groping, but the power of seeing; not the willingness to follow, but the longing to choose. It is in this, especially, that man differs from any of the lower animals;—that he is not a mere trick-learner, but he is a getter and transmitter of fresh knowledge. And hence arises the vast importance of full play being given to the development of all *motives* to effort, enterprise, and self-exertion. Everything that tends to check that development,

however well meant it may be, and however much it may help to administer to the mere *animal* part of man's nature, is a direct means of dwarfing and benumbing the highest characteristics of man, and of taming him down to the condition of the mere drilled brute.

True Education assuredly does not consist in teaching men to adopt the opinions of any man, however good and great; but in so training the powers, by wholesome exercise, that they shall be able to appreciate the value and truth of the opinions of different men, and to accept them, or not, according to their understandingly-felt worth. Self-respect and self-reliance are the great essentials which true Education has to implant.*

There is all the difference between a man imbibing largely the retailments of other men,—that is, accumulating a great stock of the facts and opinions which others have arrived at,—and his having a practical energy given to his own mind. The latter only is the *able* man and the useful member of society.†

And there is only one mode in which this real education can be thoroughly acquired; and that is,—in the active school of the life of men called on continually to consider their own position, and to set their own wits to work in making all those arrangements which every exigency needs.

It is not theoretical inquiry or debate, the mere gymnastics of the intellect, that will ever make a man become truly educated. It is the earnest grappling with the business of real life, in a free state, that can alone do it.

With the vague and undefined ideas which most men have upon the subject of Education, it is not surprising that it has been able to be made a very useful stalking-horse, in different countries, for the work of Centralization. When the servants or organs of governments are found giving "returns" of who can read and write, and who not; or when men professing themselves friends of "Education" are found dealing in

* See before, p. 63.

† See before, pp. 66, 67.

statistics of *Schools*, as if they were statistics of *Education*; it is clear that anything like true education is very far from the comprehension, if not from the wish, either of those Governments, or of these professed advocates of what they call by that name.

On the continent of Europe the *word* education has been long used, and the *thing* driven out more and more. Minds have been drilled, not capacitated; taught to imbibe, not to weigh. It is not reading and writing, science and the arts, that ever did or ever can make the educated man. Engrossing the attention with these, may indeed be made the most effectual means of preventing the man becoming truly educated. Of this, Prussia offers a striking example. With a nominal education,—a state education,—of great elaborateness, the result is, as it was intended to be, a people incapable of dealing with their own wants and conditions, and submitting to be dealt with as herds of animals who exist only for the behoof of kings. An observant and thoughtful writer, speaking of the Prussian system, "so ignorantly held up as a system to be adopted in this country," * well describes its people as being "the most superintended, the most interfered with, the most destitute of civil freedom and political rights,—in a word, the most enslaved,—people in Western Europe; and the *most educated*;" †—that is, in what is conventionally called education;—the drilling of the mind, not its development. This testimony is confirmed by all who thoroughly, and not merely superficially, have understood and watched the system, and who have not been deluded by meaningless statistics of schools.

The more systematic a general system of education is, the more sure may we be that it is a moulding system and not a developing system that is going on. The pretence is sometimes raised that the State is bound to interfere, to protect the young mind from imbibing the prejudices and narrow

* Laing's Observations on Europe in 1848 and 1849, p. 203.
† Laing, Ib. p. 188.

views of the parent, and to give it the highest tone of the age. As if the State were some superhuman abstraction, or could act by other than individual human means; and as if, however narrow and prejudiced individual parental opinions may be, it were not always far healthier that the endless variety of modes of thought thus induced should be so, than that one monotonous drilling system, agreeable to the opinions and purposes of those who may happen to be in places of power, should be adopted. Committees of Council may pedantically approve and recommend, and Inspectors may pedantically examine and report; but everything thus done, and thus looked to be done, has, as its necessary result, the withering of true education, the rearing up, at best, of a factitious and unhealthy moulding machinery.

All that can be done, without mischief, in respect to the education of children, is to prepare carefully the ground whence good fruit shall thereafter spring. It is not the most ignorant, in the sense of want of acquired knowledge, that are the most criminal: decidedly the reverse. The most uneducated man is he who has had all his powers of getting knowledge tasked to the uttermost, but has never been trained to the habit of thoughtfully considering how that knowledge may be applied by him in his active relations to his fellow-men.

What is needed in true early education (secularly considered) is, to give the fullest sense of the position of duty and responsibility in which every man stands to his fellows, and the fullest knowledge of the means every man has, or may by self-exertion get, of fulfilling those duties and responsibilities. The more wide the variety of the modes in which, and the circumstances under which, those duties and responsibilities are held up truthfully before the child's view, the more likelihood is there that, taken as a whole, they will become practically understood. The moment any State authority steps in with any interference in the matter, that moment the teaching, not of the duties and responsibilities rightly claimed by freemen of each other, but of the subjection of the mind and conduct to the dictation of others, will, more or less directly, be

inculcated:—and, so, true education will be hindered instead of being helped. Any system of general education which gives any place to Government Inspection, or subjects arrangements in any shape to *approval* by authority, or empowers any *recommendation* by authority;—which does not, in fact, shut the door upon everything of this sort;—has in it the seeds of mischief, and bears on its face the evidence that its end is, not development and free and original exercise, but moulding and obedience; the shaping of the national mind to the convenience or caprice of rulers, or the influence of a class, and not the forwarding of the well-being of a free people.*

Institutions of Local Self-Government afford the only true School for the highest practical development of Education, and also the only true means for leading on the child to that development. This happens in two ways. Though children cannot, of course, receive their early training in the Public exercise of those Institutions, the sense of moral responsibility and of social duty which is the necessary consequence of that exercise, has its most marked effect in the home of every man, and makes felt the duty of early leading the young minds and actions of children into channels which shall afterwards ensure their best free and healthy exercise. A first duty and responsibility which each man owes to Society, his children, and himself, is felt to lie in making his children fit, as their fathers have been, for the discharge of their duties, as freemen, when they come to be men. The moment the youth puts on the functions of the man he is called upon to exercise, practically, the duties and responsibilities of the freeman, and all his faculties are thus called into free action. The results of institutions of Local Self-Government in this direction have been already shown.†

* In England the Privy Council has presumed to *approve* works on mathematics, &c. &c. In the United States of America there are special Boards which presume to determine what Histories, &c., shall be taught!!

† See before, pp. 50, 66, 244.

In speaking here of Education, in a general sense, the education for trades and occupations is not included. But even that class of education only furnishes, in truth, a further illustration of what has been maintained. The education for a trade or calling is, the developing of some special powers which may be successfully applied in a particular way. He who merely teaches rule-of-thumb manipulation, who makes his apprentice but a human piece of clock-work, is a poor master in any trade; and it will be no thanks to the teaching he has had if the pupil ever becomes more than a traditionary servile copyist. He is the good master who teaches his apprentice the grounds of his practice; the reasons, as he understands them, of his processes. A pupil so taught will, when thrown on his own resources, not follow, servilely, the pattern set him, but search and find out for himself new processes.

And it is the same with the higher education of men in reference to their duties to their fellow-men. It is the interest of all holding power to keep men in a certain beaten track. All State education will have this tendency. And, by the fact of a routine system being provided, individuals will always the less appreciate the value, and less have the power, of independent and progressive inquiry and activity.

The mischiefs of a system of artificial State Education have already been widely felt in England. This has been before alluded to. "Reports" and other documents are put out, under the authority of Government, and of Centralizing "Boards," with the intention, and with the effect, of imposing upon the mass of men, but especially upon those who are what is conventionally called "educated;" and so of inducing them to save themselves the trouble of individual thought, and to support the projects of those having or seeking power, however self-interested and mischievous these projects may be. This is a most real, though unavowed, system of State education; and enormous are the mischiefs, and the dangers to Free Institutions, that it has already produced.

No people, then, that has any sense of self-respect, or

values true Free Institutions, will suffer any scheme of State education to be fastened on it. The high duty and responsibility of omitting no means by which the young powers can be rendered fit for their future sphere of action, as belonging to members of a free community, will be felt and acted on by every parent. But the needful means must be devised according to the free judgment of each parent;—by the common union, it may be, of those in each place, after, and always subject to, full discussion and consideration and uninterfered-with management by those themselves most deeply interested in helping to bring about a sound result. This will be true national education: this only can be the education that will ever bring up a nation of freemen. The Principles of Local Self-Government and those of Centralization stand out as strikingly contrasted, for good and ill, in reference to the important matter of Education as in reference to any other matter of social welfare that can be touched on.

A careful observer and thoughtful reasoner gives utterance, as the result of observations widely extended, to what so fully bears out all that has been thus said, that it may well be quoted in conclusion:*—

"The Continental people have enjoyed, in this generation, an educational system which brings the whole population through Government schools and seminaries adapted to every age, capacity, and station; taught by masters trained in normal schools to the science of teaching. * * * The results of this universal and compulsory educational system, from which so many good, well-meaning persons expected a speedy millennium of moral, intellectual, and social improvement and well-being, have not proved satisfactory. It has, no doubt, dispelled gross ignorance, and has diffused widely the pleasures of knowledge, and of cultivated tastes unknown to our labouring and middle classes, perhaps even to a large proportion of our wealthier class. *But knowledge is not mental power.* The mind is not formed in schools, but in free

* Laing as before, p. 530.

social action with affairs, interests, and temptations, which call forth the exercise of judgment, prudence, reflection, moral restraint, and right principle. The Continental common-man may know more of geography, history, and all the branches of education included in what is called useful knowledge, than our ignorant man in the same station; but his mental powers, his judgment, his good sense, his acuteness in his own business, his industrial habits, his domestic habits, his sense of what is due to himself and others, his sense of right and wrong, his religious sense, are not so well educated. He is, owing to the social circumstances in which he lives, less capable of self-action, of independent opinion, of judging rightly in affairs public or private, than the much more ignorant man of the same station in England. His knowledge and taste, in all literary and especially imaginative productions, and in all that addresses itself to the ear and eye, may be much more cultivated; but this school-room training, although it adds to his [selfish] intellectual enjoyments, does not add to his energy, perseverance, intellectual powers of judging and acting rightly, nor to those qualifications which make the upright respected man, and useful citizen. *For these acquirements he must go to a higher school than the Prussian gymnasia,—to the school of life in a free society, in which every man may manage his own interests according to his own judgment.*"

CHAPTER XXIV.

PROTESTANTISM AND POPERY.

NEARLY connected with the subject of Education is that of Protestantism and Popery, as a question of antagonist Principles. The subject of Education, which has reference to the exercise and development of all the faculties, includes, as a part of itself, the topics usually considered as belonging to the discussions on Protestantism and Popery,—and which relate to the religious direction of the faculties only. But, in reality, the antagonist principles thus expressed, have a far wider significance. The whole of this work is an assertion of the Principles of Protestantism. Centralization, under any of its shapes, is but one or another form of Popery.*

It is not speculative opinions or theological dogmas that are here to be spoken of. It is the antagonism of the two grand PRINCIPLES;—the one, that it is the right and the duty of every man to exercise for himself the faculties and free spirit which God has given him; and that so only he can either prove his love to God or fulfil his obligations to his neighbour:—the other, that the minds and souls of all men are to be held in subjection to the dogmas put forth or sanctioned by a human priesthood, mortal and fallible like themselves; and, therefore, that men best show their love to God, and best discharge their obligations to their neighbours, by letting lie inactive, and unused, and wrapped up in a napkin,

* "All the most eminently scientific, all the most eminently brave and daring in the exercise of their intellects, live, and have ever lived, under a Popish government. There are Popes in all Creeds, in all countries, in all ages."—Landor's Imag. Conv., *Barrow and Newton.*

the talents, powers, and free spirit, which have been committed to their trust.

The one principle is active and vivifying; the other is passive and deadening.

The one principle is developing; the other is contracting.

The one principle is expansive; the other is repressive.

The one principle is elevating; the other is prostrating.

The one principle is promotive of self-reliance; the other of dependence.

The one principle is truly educational; the other is dictative.

The one principle embodies the idea and fact of manly freedom; the other, the idea and fact of degrading tyranny.

The land which, from the earliest times, abhorred and resisted Centralization in any form, resisted equally that Centralization when it approached under the garb of Religion. Whatever the pretensions of the Church of Rome were, they were always kept within very limited practical assertion in England. The Anglo-Saxon Church itself asserted and maintained a practical independence of Rome; and the laity of England did not allow the arrogant pretensions which Churchmen have always made, to be carried to the heights they elsewhere reached. On both points the same spirit of practical Protestantism was shown in the famous Constitutions of Clarendon, passed at a Parliament holden in the reign of Henry II. Another instance has been already quoted, with another object, but singularly illustrative of the present point, showing how, in the 51 Edw. III., the Commons refused to be bound by any rules which any synod of Churchmen might make, unless those rules had their own absolute consent.* Some other instances have also been incidentally mentioned,† which show the spirit of resistance, in England, during all the time that the *Religion* of the country was, doctrinally, the same as that of Rome, to the *Popery* which forms a part of the *political system* of Rome; to the arrogant pre-

* See before, p. 120. † See before, p 70.

tensions and usurping encroachments of the *temporal Prince* of Rome. The religious faith of the land was that of Rome, because that was the only mode and shape in which Christianity was, formularily, known at the time. But the spirit of the land was Protestant, so far as resistance to the Centralizing aims and influence of the Popish councils was concerned. The noble answer given by the Parliament of Merton (A.D. 1235) spoke the true spirit of Protestant Freemen:—"We will not have the Good Old Common Law of the land to be made to bow before a new Law brought in to suit the purposes of Churchmen." Verily did "the laity" of those times "let the clergy know that they are not lords over God's heritage." *

England was never freer than while thus holding to the Romish faith. Never was the spirit of true Free Institutions better understood, or more thoroughly carried out, practically, than during those times. And this will easily be understood from what has been above shown;—namely, that the political part cunningly engrafted on the Romish religious faith never succeeded in getting firm root in England.

It is a striking, but unquestionable, fact that it was the very circumstance of the "Reformation" that made real Popery more known and felt in England than ever before; while it has been professed hatred to Popery that has contributed, more than anything else, to the undermining of our civil liberties.

To Henry VIII. is commonly given the honour of introducing the Reformation into England. Does it belong to him? Assuredly not. Henry VIII. was the first Pope ever really known in England,—and the most arbitrary one too, so far as he could have his will. It is in his reign that the Statute Book becomes disgraced with Popish edicts. To him and his Counsellors the very spirit of Protestantism was utterly unknown; or, if known, utterly detested by them. The Counsellors of Edward VI. had more of that spirit: † as

* Speech of the Dean of Bristol, 20th Nov., 1850.

† It is startling, and not a little humiliating, to compare the en-

also had some of those of Queen Elizabeth. But all these latter saw, clearly enough, that the blow at Romish Popery afforded a capital opportunity for the augmentation of the power of the Crown; for the weakening of the rights, liberties, and responsibilities of the people. In the first place, the Crown assumed to clothe itself in a spiritual, in addition to its merely civil, character. In the next place, those in power found the name and pretended designs of Romish

lightened Protestant spirit of some of the English Fathers of Reformation with the gloomy monkishness which has been growing in our day. An illustration of the latter has been given in a previous note (see p. 238). For something of the former, reference may be made to such Statutes, even, as 2 & 3 Edward VI., c. 19,—in which it is declared that "one day, or one kind of meat, of itself is not more holy, more pure, or more clean than another; for that all days and all meats be of their nature of one equal purity, clean-ness, and holiness; and that all men should by them live to the Glory of God, and at all times, and for all meats, give thanks unto him;" and as 5 & 6 Edward VI., c. 3,—in which it is declared that "the times appointed specially for God's Service, are called Holy-Days, not for the matter and nature either of the time or day. * * * Neither is it to be thought that there is any certain time or definite number of days prescribed in Holy Scripture, but that the appointment both of the time and also of the number of the days is left, by the authority of God's word, to the liberty of Christ's Church;" and in which Act it is expressly provided that, though Sunday shall be a holy-day, yet "it shall be lawful to any husbandman, labourer, fisherman, and to all and every other person and persons, of what state, degree, or condition he or they be, upon the Holy-days aforesaid, in Harvest, or at any other times in the year, when necessity shall require, to labour, ride, fish, or work any kind of work, at their free wills and pleasure." The 43rd Eliz., c. 2, even *instructs* the Overseers of the Poor to meet, in the Parish Church, "upon the Sunday in the afternoon, after Divine Service," to arrange and discharge their businesses. And, having had the opportunity of going through the whole of the Records of one parish, near the Metropolis, for nearly a century and a half, I have found that, up to the close of the eighteenth century, public vestries were in the habit of being frequently held, on all kinds of subjects, in the Church, on the Sunday afternoon;—a practice that, properly considered, is sound and peculiarly wholesome, instead of being, as the sickly gloomy monkishness of 1850 has it, "a scandal to religion."

Popery always a most convenient bugbear by which to get unconstitutional powers entrusted to their hands,—nominally to resist dangers from those external attempts, really to usurp to themselves, at home, that control and influence which Rome had formerly, indeed, sometimes asserted at a distance, but which had always been in fact denied. The deeper and more fatal mischief hence grew up,—that these means were used to crush the civil liberties of men so truly earnest in their Protestant spirit that, not alive to the treachery of the crafty seekers after power, they allowed their civil rights and responsibilities to be encroached upon under the pretence that it was, at the time, necessary to meet impending dangers;—but, the pretended dangers past, those encroachments have never been drawn back from.

These remarks apply in all their force, and may serve as some key, to the events following the Revolution of 1688.*

The Papal Court,—always distinguishing this from the Romish religious faith,—has ever pursued, and still pursues, the same course to gain its ends that all other modes of Centralization do. To secure its ascendancy, it spreads an army of dependents over every land, self-interested in asserting its Supremacy; just as other forms of Centralization have their civil functionaries. And when the latter, to gain further power, and fetter human freedom more, make up New Commissions, with Commissioners, Inspectors, and a host of inferior functionaries,—they do but copy the example long set by Rome, when she institutes new Orders, with their Principals, Superiors, and Brethren. The spirit, the idea, the intention, are the same in each case. The Pope may be at Rome in the one instance, and at Whitehall, or Somerset House, or Gwydyr House, in the others; but, the Popish spirit is the same; the practical mischief equally results; the degradation of the free spirit which God has given, before a human priesthood, is, in each case, the object and the fatal consequence.

However much the Church of England may have thrown

* See before, pp. 192, 195, &c.

off some doctrines of Rome, it has never thrown off much of the spirit of her pretensions. No Church which seeks to bind men to Creeds and Articles can be a real Protestant Church; and the time has yet to come when the Church of England shall approve her Protestantism by making *comprehensiveness* her characteristic, instead of *demarcation*. Tolerant she may be, and usually is; but no freeman or Protestant will either consent to give tolerance or to take it. Tolerance asserts a pre-eminence and a Popish authority,—though it may graciously, as of favour, waive its exercise. Protestantism asserts the universality of the inherent right and duty to use, in the best way able, all the powers man has; and neither bids one number to do this within a certain range only, nor presumes condescendingly to *bear with* others who go without or beyond that range. Protestantism asserts that discussion and inquiry are the ways to get at truth, and that no man, Pope or Commissioner, Priest or Inspector, has any right to interpose restrictions or dictate a path. Of a truth, Protestantism is, to the full, as important in matters civil as it is in matters religious.

The question of how far a particular Church shall be allowed to work its way and plant itself in a land, is perhaps a difficult one, though not altogether so difficult as it may seem. No honest man would wish to give any hurt to another, or to impose physical restraint over him, because his speculative opinions were in favour of Centralization on any particular civil matters. He would merely have him be let know that a nation of freemen cannot, and will not, consent to be made slaves, under any disguises; and that he will not be allowed to beguile the unwitting under false pretences. It would be manifestly absurd if any one were to pretend that he was treated harshly, because the only way in which his views could be carried out was by having an army of functionaries, implicitly obedient to his recognized authority; and that he was refused this. Yet it is exactly this which is done when, under cover of Liberalism, it is pretended that a restraint is put on those holding the Roman Catholic faith, if

any hindrance is placed in the way of the ostentatious parade of the system of functionarism by which one form of Centralization contrives to spread itself. Men are desired to yield, in the nineteenth century, what was not ventured to be asked in the tenth. An honest religious faith is one thing. The use of unfair and indirect means to propagate an outward proselytism to that faith is quite another thing. And, as do all forms of Centralization, Romish Popery seeks to extend itself by appeals to the *material* part of man, and so, by insidious means, to entrap and enslave the soul.

The parent may well snatch his child from the flame through which the votary of Moloch would pass him,—without charge of Bigotry or Intolerance. The voice of the beguiler who would seduce unsuspecting innocence may be well stopped,—without charge of peace-breach or liberty infringed. And, so, it is truly a strange consistency which, while professing love of discussion and inquiry and religious freedom, would brand, as bigotry, the wish to check, in a land of which free thought and action are the best inheritance, the outward and ostentatious parade,—offensive to the feelings and strong sympathies of the vast majority,—of the mere externals of a system which seeks to gain proselytes by fettering the free action of the thought and soul through the means of the forestalled senses.

No true Protestant can suffer any disability for any civil office to attach to any one by reason of his religious faith. The laying down such disability is an act and mark of Popishness. But the true Protestant must do more than this mere negative consistency. He must resist all means by which the free development of the faculties of man is sought to be hindered. By argument he must do this where persuasion only is used; but, when physical and material and extraneous means are used, and obtruded beyond the actual range of those voluntarily seeking them, and manifestly with the design of attracting and imposing on the unwary, he abandons his Protestant profession unless he firmly and manfully stands up against the attempt.

The Principles of Protestantism are manifestly, then, identified with the Principles of Local Self-Government; the same in idea, in spirit, in practical effect upon the life, character, and conversation. The Principles of Popery,—not, necessarily, its religious faith, which is sacred to every man's own soul who earnestly holds it, but its civil, social, and political pretensions,—are a part of the system of Centralization; identified with every other form in which that system manifests itself in their necessary effects on the independence and earnestness of the minds of those who bow before them. While, therefore, any man may be a sincere adherent to the religious *faith* of the Roman Church,—though declining, as did our fathers, to recognize the civil, social, and political pretensions of Romish functionaries,—and, holding that faith sincerely, have the respect of every honest man, it is quite clear that no man can be a true Protestant, however loud his professions, who allows Centralization, in any of its forms, political, civil, or social, to find a place within a land which boasts of being free.

CHAPTER XXV.

PUBLIC HEALTH, ETC.

THERE is nothing for which the Common Law of England has, at all times, had more careful regard than the Public Health. It has been already shown,* that the Common Law relating to this subject is peculiarly marked by that characteristic which distinguishes a branch of law based on a true *principle* from one that is merely empirical; namely, that it is adaptable to all changes of circumstances; that, no sooner can it be shown to the common sense of unbiassed men, that any thing or proceeding is injurious to health, than that thing or proceeding comes within the definition of what the law has declared to be illegal. There is no law clearer or simpler: and never was there any course that, if earnestly and honestly followed up, with the real end of the public good, would so entirely carry with it the immediate and active co-operation of the Common Law, as one for the Improvement of the Public Health.

Progressive improvements had long been going on in matters tending to promote the Public Health, notwithstanding the obstructions carefully thrown in the way of the free action of true Institutions of Local Self-Government. But, when Legislation began immediately to interfere upon this subject, a check was necessarily at *once* put to those improvements. Men were drawn off from seeking a truth and a reality to following a form and a shadow. The "fair flattering pre-

* P. 116.

tences" under which the Public Health Act, 1848, was brought forward, imposed on great numbers, who were undoubtedly sincere in their own efforts, but who were equally unfamiliar with administrative principles and with the disguises under which the eager graspers at power mask their designs. Such persons did not trouble themselves to examine the Bill itself, nor could have understood it if they had done so. The name was sufficient. Petitions were got up in favour of the Public Health Bill; and signed, on the solicited system, without the least knowledge of what was the nature of the measure so petitioned for. That measure was brought forward under a panic, carefully cherished; and was urged on, and supported throughout, by false pretences and by means of manufactured evidence. Not a word was said on the existing Law as applicable to the subject, though this was self-evidently the very first thing that should have been carefully pointed out.* The real object aimed at, and pursued, and to gain which many honest and sincere men were made the mere tools, was, to open a new boundless field for functionarism and jobbing; to seize a favourable opportunity for the widest extension of the Centralizing principle; to destroy, as far as possible, every remnant of the principle and practice of true Local Self-Government throughout the land. The Public Health Act was an Act to legalize universal jobbing, to create universal patronage. In short, the subject of Health by Act of Parliament was conceived to be one by which sentimental philanthropists might be imposed on to any extent; and to give the most favorable opportunity that had long offered for speciously stigmatizing the earnest friends of the rights, duties, and responsibilities of freemen, and the earnest helpers of true human progress, as opponents of "Reform;"—and, so, for the most effectually extending the work of Centralization.

Had Local Self-Government been re-invigorated, instead of the occasion being only thought of as one to increase

* See before, p. 145.

government patronage and extend the system of Centralization, much good might have been done. Had those who took up the question, themselves adopted systematic steps to put the Common Law in force, and gone on pursuing this course,—which reaches every case,—till all men perceived, as would very quickly have been done, the benefits derived from well-considered steps, how valuable a work might have been achieved! But such earnest, real, self-depending exertion does not suit the taste or habits of sentimental philanthropists, or of the grasping seekers after Centralized power. They prefer to draw up plans and schemes and pompous "Reports" in their closets, and to go about parading them, and trying to enforce them on the country by the Centralized machinery of packed Commissions.

The result has been, and can only be, the stoppage of real progress, where earnestly desired; the incurring of enormous wasteful outlay; and the dwarfing of the minds, and the degradation of the moral tone, of those who submit to the presumptuous dictation and intermeddling of a procrustean Centralized authority, which changes, each day, its schemes and plans,—but, each day, announces the last new scheme with equally presumptuous confidence, and requires equally implicit obedience to every contradictory decree.

The ridiculous pretensions put forward by the Board of Health to infallibility, have deserved only the contempt which, except at the hands of interested parties, they have received. They excite the natural disgust of every honest man who truly seeks the welfare of his fellow-creatures. Human infallibility can be found no more at Gwydyr House than at the Vatican.

One mark of the quackery on which the whole interested scheme of Health by Act of Parliament rests, is to be found in the isolated magnitude ascribed to the special subject. Instead of the Public Health being regarded as connected with all that goes to make up human welfare, as it is wisely regarded by the Common Law, a few single *material* points (as usual by Centralizers) have had all attention fixed on them; and the realization of these latter, by Centralized means, is

proclaimed to be "paramount to all civil and other Institutions."* Moral and mental elevation, social well-being and responsibility, political independence, commercial freedom:—all these are nothing: nay, all are to be sacrificed, and by the Public Health Act are actually sacrificed, at the shrine of this meretricious inflation which the spirit of Centralization has raised up. Never was Coke's remark more truly applicable, that, in this matter, "the houses of Parliament have not been clearly dealt withal, but, by cunning artifice of words, utterly deceived."†

The love of all despotic means is exemplified in the endeavour to prevent those competent to the work from doing even local Surveys; and to enforce the doing of all these, everywhere, under military authority, and control.‡ The determination to use the factitious position gotten by means of an unconstitutional statute, in order, still more, to grasp at self-aggrandizement, has been shown in spending their time—instead of on the professed objects of their appointment—in the getting up of various "Reports," all seeking to draw to their authors further powers.§ The Board of Health is unauthorized by any Act to make such Reports, or to make the nation liable for the expense that is recklessly incurred in manufacturing them. But everything like responsibility is absent; and such considerations are not therefore entertained for a moment. The scheme of State education is industriously worked.‖ It is thought that the ignorant and the well-meaning will be sufficiently imposed upon by an assumption of authority, however illegal, and by pompous forms of words and a display of seals;—and that so the end sought will be obtained.

The fundamental Principles of the Common Law, already

* See Letter to the Metropolitan Sanatory Commission; by the present writer; second edition, Preface, p. xv.

† 4 Inst. 42.

‡ See Minute of the Board of Health of 26th July, 1850.

§ Report to Parliament, 1849: Reports on Intramural Burial, and on Water Supply, &c.

‖ See before, pp. 304, 324.

explained in reference to Charters and Local organization, are altogether directly set at nought by the Public Health Act. The undiscussed and dictated Petition of a minute minority,* got up by secret solicitation, is made to bind the whole; and a central Board, having no possible knowledge of circumstances, presumes to arrogate power to dictate as to all those things which the Common Law and the Constitution, as well as common reason, declare can only be well understood and ordered by those immediately interested. Legislative powers to the widest extent are pretended to be delegated to a Crown-appointed irresponsible secret Board; which powers, also, it presumes to attempt to exercise even far beyond the meaning of its own Act,—relying on the deterring cost of any legal contest.† And that exercise is of the most arbitrary and mischievous character, setting at nought as well all principles of social right and wrong, as all the rights of property and free action of individuals and groups of men.

A case occurred in 1850, in which, by one of the presumptuous "Provisional Orders" of the Board of Health, slavishly confirmed, as usual, by an obedient Parliament, several hundreds of acres of land, enclosed for forty years, —all under cultivation, and much of it built upon; some held as private property, the rest under Leases, &c., to trustees for public purposes,—must fall back again, if such Provisional Orders are to be held lawful, to its original condition of waste, and become again subject to commonable rights; thus upsetting all the rights of property and all the social advancement that have grown up, and which have been ignorantly supposed to be protected by the laws of a free and civilized country.‡ Such are the effects of the combination of sentimental philanthropy and empirical legislation.

* Less than *two per cent.* of the population, instead of a majority of it!! See before, pp. 101, 102.

† See before, pp. 159, 186, note, and 207.

‡ The truth of the facts thus stated, is within my personal knowledge.

The system of dictated and secret solicited Petitioning is carefully made a part of the system of Health by Act of Parliament; it being felt that there can be no better aid to arbitrary purposes, and that the objects sought to be accomplished will not bear the light of free and open discussion.

Social treachery is favoured and cherished, and local animosities stirred up; as among the surest means to forward designs hostile to progress, responsibility, and human freedom.

Local Cliques are the instruments provided, without the trace of any real election or responsibility, to be the subservient means of enforcing the decrees of the secret irresponsible central Board.

Any apparent protections given to the inhabitants of any place, that good faith shall have been observed in the introduction of the Act there, or in the mode of its administration, are made altogether delusive and carefully deceptive. No proof of good faith, or of compliance even with the requisites of the Act itself, can be compelled. The inhabitants and the rate-payers are entirely at the mercy of the subservient local instrument of the central dictators, and of any of their officious officers or servants.*

It must, indeed, be a bad cause that can only work by such means. It stands confessed, as conscious of having no support in right or truth; as conscious that its doings will not bear the light; as conscious that men of common honesty and common sense can never be found to sanction what is thus sought to be carried out by enforced means; as conscious that the admission of its own pretensions and the existence of any of the practical principles of Free Institutions, are two things utterly incompatible with one another.

The responsibility for the hindrance caused to a course of real improvement lies on those who have preferred thus

* See and compare sections 106, 132, 139, 140, and many other ones of a like spirit, in the Public Health Act. It is, of course, mere mockery to say that a *quo warranto* may be tried, or an appeal made to Parliament.

seeking for unconstitutional, irregular, and self-interested measures, instead of directing honest energies towards infusing vigour into constitutional, regular, and well-tried practical principles.*

The Metropolitan Buildings Act, 1844, is another measure of the same class as the Public Health Act. It gives much patronage; but affords no security whatever to the public. Obstructions of the most vexatious character are thrown in the way of improvements; and individuals gain an advantage at the expense of confiscation enforced upon their neighbours, and of a wide-spread demoralization. Like all Centralizing measures, this affords an example of the creation of a numerous band of functionaries, for whose benefit the public is treated as existing.†

The Metropolitan Sewers Act, 1848, resembles, in many respects, the Public Health Act. It was got to be passed by a trick,‡ and under the same panic as the Public Health Act, and by means of similar manufactured evidence. It entirely reversed the whole Law of Sewers, and gave the most arbitrary powers, both of administration and of taxation, to a few irresponsible Crown-appointed functionaries. Though only to be in force for two years, it pretended to give powers to impose unlimited taxation, by which the whole Metropolis should be burdened, and so effectually hindered from progressive improvement, for thirty years.

The History of this matter is curious, and affords a useful illustration of the whole subject of the present volume.

The question of Sewers has in fact no reference to Drainage at all. It refers simply and exclusively to maintaining tidal

* The efficient supply of the Metropolis with Water of fine quality and at a cheap rate, has been hindered for years, *solely* by the same means.

† The Metropolitan Burials Act, 1850, is another Act of the same class, and having the same objects. But space will not allow the enumeration of all the measures of Centralization of this class.

‡ It was passed at 2 o'clock in the morning, when only 35 members were present;—others having left, not supposing that, at such an hour, so important a measure would be ventured to be pressed.

streams clear and unbefouled, and to preventing inundations from them on to the land. The earliest record on the subject of Sewerage is of 35 Edw. I. (A. D. 1306); where we find, on the Parliament Rolls, a writ from the Crown, in its ministerial capacity, and in compliance with a Petition for that purpose, calling on the Mayor and Sheriffs of London to take needful steps to keep the River Fleet clear and unimpeded;—for that, whereas ten and twelve ships, laden with merchandize, had used to be able to go up that River as high as Holborn Bridge, its course had been lately impeded. This was at a time when the place of Temple Bar was in the rural suburbs, and when men strolled through Fetter Lane and Holborn to sniff the fresh air between the hedge rows, and listen to the babbling brooks.

In the 25 Edw. III. (A. D. 1351), and 45 Edw. III., other records appear on the Parliament Rolls of the same nature. In the first year of Henry IV. there is a statute in which the condition of the rivers is again mentioned, and allusion is, for the first time, made to "Meadows, and Pastures, and Lands Sowed, adjoining to the said Rivers," as being "greatly disturbed, drowned, wasted, and destroyed" by the same causes as befouled the rivers themselves. And this Statute contains the first allusion to Commissions expressly made to Justices, with special reference to dealing with these objects; but who are only empowered to do so by the Common Law methods. They are instructed to "*inquire*" by a jury of the neighbourhood, into the mischiefs suffered, and by whose default they have happened. For it is, as has been shown,* a part of the tenure by which every man holds his land,—and it has always been so declared by the Common Law,—that he shall so keep it as not to be a nuisance to the neighbourhood. Forms of writs to Justices to inquire touching such matters, still exist.† And it will be remem-

* Before, p. 116.

† These writs are, in fact, older than the Declaratory Statutes above quoted, and which only publish again the Common Law. They are writs at Common Law; and their terms are very remarkable.

bered that this is in accordance with what are the true functions of Justices.*

In the Rolls of Parliament of 2 Hen. VI. (A.D. 1423) allusion is again found to Commissions made for the same purposes; and the Justices under which were to discharge the duties assigned them by the same means, namely, through inquiries made by the law-worth men of the neighbourhood.

The Statute of 6 Hen. VI., c. 5, is the first statute which fixes itself particularly upon the damage done to the adjoining lands by the overflow of tidal streams. And that Statute for the first time gives power to make, within the next ten years, Commissions to Justices which shall endure beyond special need. Its object was still confined to keeping river and coast banks in good order. But extensive floods had damaged the lands adjoining so much that the preventing this became a special object of attention. Under this Act, however, as before, every matter was to be ascertained by the Rules of the Common Law; namely, by the verdict of a jury of the law-worth men of the neighbourhood.

The 23 Hen. VIII., c. 5, (A.D. 1531,)—usually, though erroneously, referred to as the foundation of Commissions of Sewers,—went on the same ground. It terms are express, that the Justices appointed under the Commissions authorized are "to *inquire*, by *the Oaths* of the honest and lawful

They prove how completely the Common Law methods did practically take active cognizance of all the very matters that Public Health Acts and Metropolitan Sewers Acts have, in modern times, sought to convert into opportunities for jobbing, and for crushing out all those principles by the activity of which such matters were formerly well and promptly dealt with. The *ordinary* topics of regular and frequent investigation have been already quoted (before, p. 298, note). The writs under consideration further expressly name "sea-walls, ditches, gutters, sewers, arches, banks, wears, and trenches," &c. &c. (See Fitzherbert's *Natura Brevium*, p. 113.) But it does not suit the purposes of the authors of Public Health Acts and Sewers Acts to listen to the Common Law upon these subjects.

* Before, p. 276.

men of the said shire or shires, place or places, WHERE such defaults or annoyances be, (*by whom* [in accordance with sound principle, it rightly adds] *the truth may the rather be known*,) through whose default &c., and who hath hurt, loss, &c. [by the damage done, or likely to be done], as well near to the said dangers, as inhabiting or dwelling thereabouts."* And under this Act it was expressly decided, and with immediate reference to the facilities afforded by the Common Law, that no power was given to these Justices "to try new inventions at the charge of the country;" "but, when new inventions are proposed, if they are apparently profitable [useful and efficient], no owner of the land there will deny to make contribution for his advantage: and then it ought to be made *by their voluntary consent and charge, and* NOT *by constraint* by force of the said Commission of Sewers upon the said Act: *but sometime, when the public good is pretended, a private benefit is intended.*"†

This Act remained in force till 1848. But, in the meantime, by means of several Private Acts,—the vicious and unconstitutional nature of the system of which has been already remarked upon, ‡—more or less arbitrary powers had been gotten to themselves by Commissions appointed under the Act of Henry VIII; and they had contrived to extend their jurisdiction over what never came within the scope of Commissions of Sewers at all;—namely, works of *Drainage*; that is, works for carrying off the refuse from the land, in contradistinction to *Sewers*, which are, exclusively, works for preventing the befouling of rivers and the flooding of the land by tidal waters. These two classes of works have no necessary connection, and the confounding of them has led to endless mischief, annoyance, and expence. The same

* Observe the equity of this mode of taxation. *Only those* had to pay, who were bound, by tenure, to prevent inundations, &c. and those who were benefited by the works done. The Sewers Act, 1848, levies taxes alike on all men, at mere arbitrary pleasure.

† 10 Coke's Reports, p. 141, &c.

‡ See before, p. 148, &c.

Common Law Principles apply, however, to the administration of each.*

It was reserved for the Sewers Act, 1848, entirely to subvert the Common Law and every principle relating to the administration and control of works, whether of Sewerage or Drainage. The ignorance by its authors of the meaning and purpose of Sewers, and of all connected with this subject, so far as the Public Health and Public Welfare are concerned, is shown throughout. This Act declares that the Commissioners under it may proceed in every case, on the mere "Information" of their own irresponsibly appointed Surveyor, without any presentment whatever. † Local Self-Government is altogether annihilated; and the most arbitrary powers of interference, irresponsible taxation, and summary jurisdiction, are pretended to be given.

Thus, while the old Law of Sewers was devised for the express end of keeping the Thames and other Rivers clear and clean and unpolluted, the effect of the Sewers Act, 1848, got under pretence of the Public Health, was to legalize the pollution and befouling of that stream to the utmost possible extent; and the works done and plans projected by the arbitrary irresponsible Board appointed under that Act, all had the tendency to increase that huge evil. So much for the "fair flattering Preambles" under which measures pretended to be for the improvement of the Public Health are got.

Every measure which pretends to define and detail, as do the Public Health Act, the Buildings Acts, the Metropolitan Sewers Act, &c., is necessarily bad. All nuisances are illegal, and preventable, at Common Law. The moment a Statutory enumeration is begun, the maxim applies, that "the detail of one thing implies the exclusion of every other." Consequently, even were the machinery, as regards those enumerated, practicable, such an Act would only be a piece of mischievous

* See "The Laws of England relating to Public Health;" by the present writer: Chapter IV., and pp. 82, 99, 102, &c.: and see before, p. 253, note.

† Section 59.

pedantry. But the machinery appointed by such Acts is not practicable. It is simply meddling and obstructive. It would be easy to fix public attention on the importance of the subject by a short declaratory Act, which should set forth the leading principles of the Common Law as to nuisances, and as to the powers and functions of all individuals and local bodies in reference thereto. What is wanted is, for it to be thoroughly known and felt that Institutions of Local Self-Government possess, at Common Law, the full powers necessary for all these purposes; and that the fulfilment of their duties and responsibilities must be looked for from them, and must be continually demanded of them by men themselves having an earnest consciousness of their own duties and responsibilities. But, instead of this, every pains has been taken to fetter all powers of Local activity, in order that the opportunity might be afforded, under pretence of the Public Health, or any other catch-word of the day, for Centralization to extend her arbitrary and degrading influence. In matters so nearly connected with individual well-being and social comfort, and so necessarily Local in their character,—and falling, therefore, peculiarly within the range and duty of Local Self-Government,—men are thus taught habitually to look to others to do for them what they have the power, and it is their duty, to do for themselves. They submit to have enforced on them a system which assumes to take the management and control of their own affairs out of the hands of those whose own interests and well-being are concerned, and who alone can, by any possibility, know the conditions and circumstances, without a knowledge of which the subject matter can never be properly dealt with; and to put that management and control into the hands of a few Crown-appointed and irresponsible persons, who can know nothing of the conditions and circumstances, and who have no immediate interest in the result. The Public Health Act, and the Metropolitan Sewers Act, 1848, have worked ill and unsatisfactorily, because they have no basis in Principle, but are antagonistic

to the first elements of Justice, and to the long-tried rules of the Common Law.

This question is not only a financial one (though a very serious one in that respect), nor only one connected with the Public Health. It is immediately connected with the Political and Social Relations, Duties, and Responsibilities of men living in a free community. In it are embraced the whole of the considerations,—whether men shall have the management of their own affairs in their own hands, to be administered by those appointed by themselves and responsible to them; or whether they shall submit to have their affairs managed for them by individuals arbitrarily set over them, and who are irresponsible to them alike for works done and for moneys levied.

CHAPTER XXVI.

PARTNERSHIP AND COMMUNISM.

THE two subjects of Partnership and Communism are here put together, not because they have any relationship to one another, but in order that the wide and very important difference which exists between them may be seen. The one is identified with the principles of Local Self-Government; the other with those of Centralization: the one with the progress of the human race; the other with its retrogression: the one cherishes moral and intellectual tendencies and aspirations; the other material ones only.

The remedies held out to the masses who too justly feel themselves suffering wrongs at the hands of society, are usually, now-a-days, of two kinds. The first, and a continual one, is, to go as suppliants to Parliament, to beg its enforced interference. The other, which, in reality, rather differs from the former in phraseology than in idea and tendency, is, to embrace *Communism*. Each remedy is equally delusive. The former one has been already treated of. The latter claims some special notice.

If Communism means anything distinctive, it means the abolition of all individual property, and, therefore, the cessation of all effort for its individual accumulation. But those who advocate such a system have not considered that there is nothing good which has not its abuse, and that, because abuse has crept in, the principle itself is by no means necessarily "unjust, immoral, and a robbery,"—as everything involving Competition and private property has been alleged to be. Upon the exertion of individual effort, the putting forth of

individual energy—and, therefore, upon the continued supply of *motives* to both—depend, and always must depend, the progress of the human race, the advance of all true civilization, the very condition of mankind as superior to that of the brutes. Either this principle must still actively exist, or society must go back to barbarism. A healthy competition is not only compatible with, but it is essential to, the elevation of the working-man to his true and dignified position in the social scale. That healthy competition is as widely removed from mere gross and debasing Mammon-worship, which kills out every true human sympathy and lofty sentiment, as it is from Communism. As is so often the case with extremes, these last two meet, and are alike in their necessarily debasing results. The individual life and duty of each man, as a part of the State, and as having individual duties in reference to the State, are deadened by each alike. A general apathy to all social duties, an indifference to the welfare of others, as well as to personal true elevation, always have been, and always will be, the result of the tendency to each alike. It has been already shown* that this selfish and engrossing Mammon-worship, with all its debasing consequences, springs up necessarily as the fruit of Centralization. It has been so in every age and country where the system of Centralization has been allowed to fasten.

The true friend of the working man will, then, assure him that, for him to right himself, the very worst course he can pursue is to begin by declaring war against the elements of Society. As little will the working man do wisely to listen to the syren voice of any of those sentimental philanthropists who now abound, and who want to interfere in every man's concerns (in the true spirit of Communism) in order to enforce their own pet panaceas. It is the common characteristic of all these schemers, that they all show a consciousness of weakness, and a want of confidence in the truth of their own theories, inasmuch as they are not content to carry out their

* See Chapters II. & III.

plans by the legitimate means of argument, persuasion, and example, but invariably seek to set up a system of dogmatic oligarchism to enforce those plans. There is no hope for the working man in the results of any of these schemes and Centralizing attempts. Their permanent effect can only be to cramp, fetter, and tie up those efforts and free energies which are his true resource: and to remove every possible obstruction in the way of the full and unshackled exercise of which is the only legitimate function of any Government which is not a usurpation and a tyranny.

Oligarchies always seek to keep the working man ignorant of his true position. They always seek to prevent the idea ever rising to his mind that he has a capital of his own, and that he is perfectly competent to use it himself, and so to help himself. The entire tendency encouraged at the present day is to seek help from others in every difficulty, instead of putting forth manly individual energies. Hence all the sentimental Centralizing schemes above alluded to. Some years ago, the Society for the Diffusion of Useful Knowledge coolly told the working man, in mockery of his wretchedness, that, when wages fell, his remedy was to "lie by in the market!" Heartless hollowness! No hint is given that he should really help himself, so that he shall be *secure against* the fall of wages. In a state of serfdom all such advisers assume that the working man is to be always kept: and a state of serfdom the working man admits to be his only portion when he consents to crawl to Governments and Parliaments to ask their pitying aid. He puts off, in so doing, every mark of self-respect, every claim to be considered as a freeman and a citizen.

An extraordinary notion is spread through all classes as to what *capital* really is. To carry out a large concern, established by speculators, not workers themselves, a heavy money capital is necessary. But capital is of two sorts; money and labour. Money, without labour and skill, can do nothing: labour and skill, without money, may do everything. A hundred men every day unite their money capital to establish

a profitable business as a public company. Why cannot a hundred other men unite their capital of skill and labour, without money (or with a merely trifling amount), to do the same? The latter are far the more likely to succeed: and the latter effort is, in every respect, as legitimate as the former. The working men only want confidence in themselves, self-respect, a consciousness of their true position, and a determination to rise above the condition of serfdom, to adopt this course, and to insure success. It will speedily be found that herein lies the working man's true remedy. It will soon be found that there is nothing to be asked for from Parliament, no true hope to be placed on sentimental philanthropists; that self-reliance is the one true and sure anchor of hope. Here is something tangible, and practical, and immediate; something which depends upon himself. There is no need to wait upon that hope deferred which maketh the heart sick. His own energy, his own skill, his own labour, is the working man's capital. It is a safer capital than the Bank of England can supply. He has only, like a good capitalist, to use it well. The joint-stock principle will be his wisest mode of investment. Let him enter, on that principle, into the fair field of competition. While the material condition of the man will be thus raised, his moral and intellectual condition will be also raised, and be continually rising.

Difficulties are alleged to exist in the way of Partnership-Unions among the working men. Those difficulties are greatly exaggerated. None exist which men determined to achieve their own elevation may not overcome. Such Partnerships are in full accordance with the spirit of the Common Law; and are, indeed, what that spirit has always encouraged. Empirical Acts of Parliament, the selfish interests of Officials, and a mere narrow and technical construction, unguided and unenlightened by an insight into constitutional Principle, have, however, unquestionably placed some practical difficulties in the way. Joint Stock Companies Acts, which ought, at any rate, to be simply declaratory of the

legal position of such bodies, have been made into means of satisfying official cravings, by the imposition of heavy fees. Restrictions thus imposed are what it is proper for freemen to demand to have removed; but the sound work of improvement must depend,—and can only truly and permanently depend,—upon the combined efforts of the working men themselves. Any reliance on the aid of Parliament, beyond the secondary one of the removal of such absolute obstructions, can only be delusive; while, to be content to crave such aid, is unworthy of men who have the capital of their own skill and labour at their command.

Those who advocate Communism often announce, in terms of no little self-complacency, the adhesion to their doctrines of men who support the sound principle of Partnership or Co-operation. But there cannot be a greater mistake than such an assumption. Co-operation and Communism express, in truth, a contradiction of ideas. Communism disavows all individual property; that is, it pens up free action and individual progressive effort. Co-operation in no way touches individual property: it does but give greater scope for free action and individual progressive effort.

The fallacy appears to spring from that common source of error—the taking a part for the whole. Man's nature is a combined one; social and individual. Alone, man cannot live. Within a circle, wider or narrower, he must always share most of his interests with others. And, in accordance with man's faculties, there is,—and, till human nature changes, always must be,—a series, if it may be so described, of concentric circles within which every man's interests and being have range; and within each of which circles every man has certain duties and responsibilities. The outer one is the national union: next comes the local community within which each man dwells: next the immediate domestic circle: finally the individual. Communism, like Centralization, would obliterate all these separate spheres of duty and responsibility; would remove all the inner circles, that keep the whole harmonious; and would maintain the outer one only, if even

that;—for Communism, if consistent, must aim to bring down all mankind within one "universal church,"—to compel the obedience of all to one relentless world-spread popery, in all matters, social, moral, intellectual, religious, and political. It is because Centralization has been long working at this obliteration in England, and still longer abroad, and so has disarranged some of the inner circles, that the very disharmony of parts which now exists in the civilized world, does actually exist. The mutual relations must be maintained. Else, the faculties have only a warped action, instead of that free action, guided by a free will, which is alone consistent with fit and full moral and intellectual development and activity.

Each human being, then, must always stand in certain relations to other human beings; but this must be in different degrees. Each must always have certain points of interest, duty, and responsibility in common with others; but this, too, in different degrees. The interests, duties, and responsibilities each has most immediately in common, are with the domestic circle: beyond these, fewer and different ones, but still positive and of very high importance, are those with the community of the district within which each dwells: beyond these, fewer still, and different again, but yet many, with the whole nation. But, in respect to each and all, the individuality of the free mind must be still maintained.

If any one of these relations is exaggerated, some other must be neglected; and so all the faculties of the man will not have scope given them, or all his duties and responsibilities be discharged. Thus the well-working of the whole system becomes affected. And it is obviously monstrous to affirm, as Communism does, that, because it is admitted that every individual has *some* duties and interests in common, within each circle, he therefore is admitted to have all the relations, interests, and duties of life in a general common. It is as bad logic as it is (though not intended so by many amiable writers) bad morality.

The true aim should be, to give, within each circle, the

fullest and free-est scope to the exercise and activity of those faculties which belong to its range; to devise the best means for cherishing that active sense of duty and responsibility which shall make every man feel that he is truly a part and parcel of each of the concentric circles,—as well of the widest as of the narrowest. It is this which the complete system of Local Self-Government does, as it has been developed in this volume. Hence its tendency to develope, healthily, all the faculties of man, for its foundations lie in the very nature of man's being and capacities, and are not dependent on or affected by the artificial changes and conditions of Society.

All the previous chapters of this work have gone to prove that, when man is sought to be restrained from exercising his faculties within any one of the natural ranges, his power of well exerting them at all is weakened. But the system which would cut away the power of individual free activity and prospective effort (which is only another way of expressing the abolition of private property), at once destroys the power of putting forth, fully and healthily, any whatever of the faculties.

Partnership is simply a contrivance by which a number of men agree—not, to obliterate all or any of the concentric circles, but—to interpose yet another circle between the domestic one and that of the district community; a circle not in the slightest degree necessarily interfering with either of those others, or with the discharge of any of the duties and responsibilities which the man owes to either; but harmonizing with both of them, and, in fact, enabling those who place themselves within it the better to perform their duties and responsibilities to all the others. Nothing can more clearly show than this obvious fact, that the idea of Partnership or Co-operation is in direct antagonism with that of Communism.

By joining such a circle no man abandons his individuality, the free action of his voluntary energies, the free impulse given to thought and enterprise. A combined effort of several is voluntarily made in order to realize, the more

effectually, the means, to each of the number, of well using the powers and faculties he has, within the range of each of the concentric circles that all, as individuals, move in. Very different indeed is this from a system which cuts out individuality altogether, and centralizes the results of every effort; so that free impulse of thought is only to be allowed, if at all, within some pedantically appointed range, and free action of energy is to be narrowed down to whatever procrustean and monotonous limits happen to fit the ideas or the interests of those who have got possession of power. A more combined soul-killing and enterprise-deadening scheme than the latter cannot be conceived of.

The true wisdom of a political and social system will clearly be that which, instead of throwing any hindrances in the way of such joint action, protects and encourages it as affording one among the means by which the powers and faculties of men shall have fuller opportunities of expansion given to them. It is a matter of the inherent right of all men, in a free state, to bestow their powers and energies in the mode by which the most complete result can be obtained. It needs no argument to prove that joint action will produce, in a vast number of instances, more complete results than individual working. It is therefore an act of mere unlawful oppression to throw artificial obstruction in its way. Whether it be in the cultivation of the land, or in any work of manufacture, it is self-evident that a number of men, combining their actual personal skill and labour, are as well able to achieve a profitable result as any one or two who start with a money capital, with which they may *pay for* the labour of many others at the lowest price they can get it. In the former case, the same course, of bringing many actual workers together, is gone through as in the latter: the same work has to be done. The difference is, that the full product of the work done goes, in the one case, into the possession of the workers themselves; in the other into that of the one or two only. And it is equally obvious that the result, as regards improvement and progress, is likely to be far more

rapid under such a co-operative system than under one which merely tends to amass wealth—by the labour of others, not by any extra labour of their own to justify it—in the hands of the few. Where all have a relative equal interest (i. e. in proportion to their actual exertions) in the good result of the matter on which their attention and labour are bestowed, there is a continual inducement held out to every man to exercise his faculties to find out any means by which the end may be gained at less labour, or in a more perfect form. He knows that he and his fellows will reap the benefit, and that it will not all go into the pocket of any middleman. And the inventor of a new and beneficial process will always find his own reward; not by the State-middleman stepping in (as Communism would have it) and absorbing all,—far more heartlessly than the most selfish individual-middleman,—but by the recognized reward and position being, from the very nature of the relations in which all stand, awarded to him who has, by his self-exertion, so helped to relieve the burdens of his fellows. Seeking, as each does, the *means*, by combined action on *certain* matters, of the more full development of his individuality as it stands in relation to *other* conditions of his life and intercourse,—and therefore of the more complete discharge of his duties and responsibilities in those conditions,—the more effectively each bestows his energies on the special object of that combined action, the more immediately and fully will the opportunities of those other developments, and the means for the discharge of those other duties and responsibilities, be opened to him.

It has been said, above, that the Common Law of England favours such combined efforts. This will already have been fully seen. Whether it be for district general management, or for trading enterprise, the principle is the same. It is the opportunity for greatest expansion, by the united effort and discussed consideration of those best able to understand their own conditions and wants; and within such ranges that the most real and practical results shall be worked

out. These last conditions must, however, always be observed; and it is of the essence of Local Self-Government to keep them observed,—while it is one of the crafty devices of Centralization to get them to be confounded or overlooked. There will always be certain matters to which a wide range is available; others to which a narrower one is more so. When, for example, a borough attempts, as a Corporate Body, to carry out any trading concern, even though professing to be for the benefit of its own members, it is certain that the work will be less well done (other conditions being the same) than when a comparatively small number, whose individual attention is given to it and immediate interests are concerned in it, have the sole management of it.

This subject is one very wide in its bearings, and, to discuss it fully, needs very full space.* Its interest and importance are undoubted. But no more can now be done than indicate the relations in which such an interesting topic stands to the great questions of Local Self-Government and Centralization. Like the other topics which have been touched on, the only true solution of the problems involved can be found in a clear comprehension and application of the fundamental principles already explained, as involved, immediately and relatively, in the practical idea of Local Self-Government.

How the kindly charities between man and man will be cherished by the practical activity of Local Self-Government, has been already pointed out. This is a point distinct from what has been above dwelt on,—but still nearly connected with it; inasmuch as it is to the wretchedness and social degradation into which so many have fallen, through the mischievous effects of Centralization, that the very idea of Communism owes its birth. Men eagerly rushing onwards in that mere selfish grasping strife which Centralization encourages, stop not to heed the wants or woes of their fellowmen; even though a word of manly sympathy or kindly

* I had proposed entering, at some length, into the subject of the old trading Guilds,—their uses and abuses: but it would extend disproportionately the consideration of the present topic.

aid,—of which there is no man but is in need at some moments of his life,—might have saved from the beginning of the wretchedness and the degradation. It is an essential characteristic of the system of Local Self-Government, that its constant tendency is, to bring men together continually, with feelings of brotherhood; that it affords every opportunity for the manly asking and manly rendering of sympathy when individual misfortune entitles to it; and that, any causes of suffering that arise from the indirect and perhaps gradual but necessary pressure of Laws, or effects of arrangements, adopted indeed for the general good, becoming thus promptly but thoroughly known and understood, it is in the power of each associated group as promptly and consistently to modify and adapt such Laws and arrangements according to what is thus shown to be needed.

CHAPTER XXVII.

POOR LAW.

In the last chapter, and in several previous pages, where the importance of Private Property has been insisted on, the ground taken has had reference to the means and opportunities for the fullest development of the powers, faculties, and free action of men. It has been shown that this can only be secured by admitting a separate interest in the product of effort and skill. But the very terms in which this right of Private Property must be stated, imply the condition, ever present, that those who do hold private property shall themselves actually fulfil the duties and responsibilities which they owe to society. The question is, who shall determine what those duties and responsibilities are. The whole of this book has given an answer to that question; namely that, for a nation to be free, the body of the freemen can alone determine these; and this, practically, in only one manner,—namely, by the practical activity, in all their relations, of Institutions of Local Self-Government.

True property, then, has the idea of mutuality attached inseparably to it. Of old, several men would join together and agree with one man that he should look after certain of their interests for them all, while they would, in return, look after certain of his interests for him. This was the relation of homagers; * and mutuality was the essence of the relation. Contracts in modern times between master and servant have, unhappily, oftentimes less of mutuality in them than

* See before, pp. 84, 91.

had this system of old. And, as a consequence of this want of true mutuality, dissatisfaction, want, poverty, and crime, grow up and spread.

The duties and responsibilities thus existing, cannot be commuted for by any money payments. Nor, as has been shown throughout this book, can they be delegated. A large part of the mischiefs of society arise from the craft of some men, who succeed in persuading others that they can commute for and delegate those duties and responsibilities. The true discharge of those duties and responsibilities altogether depends on the number of the different minds and powers directed towards them, all working towards the best mode of giving exercise and development to the powers and faculties of all, according as the nearest means of knowledge of each may suggest.

The idea of a Poor Law springs from a more or less clear perception of these truths. And the state of the Poor Law, as introduced into England by the (so-called) Poor Law Amendment Act, is a deliberate violation of the principles which these truths involve.

Without entering into any historical consideration of the recognition of the duty and responsibility that lies on society to have regard to all its members, it is sufficient to say that the Statute 43 Eliz., c. 2, had, as its primary and definitive object, a real and sound one; namely, the providing the means of exercising their powers to those who were unable otherwise to obtain them. The overseers were to "set to work the children of all such whose parents" were not able to maintain them; and, further, to "set to work all such persons having no means to maintain themselves, and using no ordinary and daily trade of life to get their living by." * The idea clearly was, that the duty lay on each district to afford opportunities, by a special machinery, where they did not exist without it, whereby the powers and faculties of all should become usefully developed. But there was no idea

* 43 Eliz., c. 2, section 1.

whatever of giving bread without those who received it being also made to know that they too had duties and responsibilities; that not only has every man a certain claim on society to give him fitting opportunities, but that society has a claim on every man to use his opportunities. They were to be all "set to work" in order that they might *earn* their bread. It was only the "lame, impotent, old, blind, and such other among them" as were "*not able to work*," that were to be provided with bread without fulfilling their part of the mutuality.

All this the "New Poor Law," as the Act of 1834 is usually called, upsets. Characterized in every part by those vices of Centralization which have been already so often demonstrated, it seeks to substitute a pedantic system of meaningless *tests* for anything in the shape of means towards the wholesome development of the faculties: it strives to reduce the poor man to the condition of him who, of old, sold himself into slavery on account of his poverty,—instead of beneficently to supply the opportunity, during the time it is denied elsewhere, of every man using the powers he has to the best of his ability. It also seeks, consistently with every characteristic of Centralization, to prevent any place striking out any path of improvement for itself; and, if any should attempt it,—as will happen sometimes, however carefully the spirit of Local Self-Government shall be sought to be crushed out,—immediately the Central power interposes, and throws obstructions in the way of any departure from its own dictated monotonous and meaningless routine.* Instead of the New Poor Law system being one whose main idea is the elevation of all above a condition of dependence, its main idea is, emphatically, to make every man who is unhappy enough to come within its gripe become a permanently degraded and debased man, and less able than ever to exercise the powers he has towards his own self-dependence, or towards the fulfil-

* This was the case in respect to the enlightened efforts made at Cork, and elsewhere, in and after 1847.

ment of the duties and responsibilities he owes to his fellow-men.

But the New Poor Law is not confined, in its degrading operation, to the paupers whom its makes. It has an equally demoralizing effect on all classes of society. Men are not taught by it the duty and responsibility of "setting to work," in the best manner for all, those who cannot else find it, and of making them feel, practically, the dignity and self-respect of earning their bread in the sweat of their brows. They are taught, on the contrary, that all they have to do is to be obedient to a high and mighty power which dwells at a distance; and which assumes the arbitrary authority, of its own discretion, to dictate, control, or approve what it may think proper, and to forbid, thwart, and obstruct whatever may not please its own infallible wisdom. Obedience to the Pope of Somerset House is as necessary to the orthodoxy of an Overseer or Guardian of the Poor, as obedience to the Pope of Rome is to the orthodoxy of any Roman Catholic. And in the most obstructive, offensive, and mischievous way does this debasing control operate. Efforts at the eradication of Pauperism are frowned upon,—for, were they to be realized, the "occupation" of the Central usurpation would be "gone." Works of improvement, totally unconnected with the management of the poor, but materially concerning the well-being of districts, are interfered with and hindered under pretence that the Poor Law Board must order, direct, and approve, every disposition of parish funds!!* The sense of the common duties of humanity is sought to be crushed out.†

The New Poor Law system is, in point of fact, a leading-on towards the old Roman practice,—which paved the way to the ruin of the morality and greatness of that empire; and under which a large mass of the population was supported on alms, and amused by shows. The shows are wanting at present, in England, it is true; but it is not unlikely, from

* These statements have reference to specific cases. It is unnecessary here, however, to mention places.

† See before, pp. 61, 158, 206.

symptoms that have shown themselves, that even these may be proposed by some universal philanthropist; and the idea is sure to be adopted, if a Board of Commissioners, and a host of Inspectors and functionaries, can be erected to carry it out.

The alteration effected on the renewal of the Poor Law in 1847 was more apparent than real. The *test* system remained as before, together with all the arbitrary controlling powers. The Board was altered from three equal Commissioners to a President having a seat in the House of Commons. But, practically speaking, there is no more real responsibility than before. The performance of local duties, the sense of local responsibility, are as much hindered and sought to be crushed out as before. The "Unions," with all their breaking up of local knowledge and efficient practical administration, remain. And how many grievances, out of the ten thousand that are daily happening, can a member of the House of Commons be called on to explain in his place in Parliament? The pretence of responsibility is, as in the case of the pretended responsibility of all other Boards and Commissions to Parliament, a pure delusion.*

As for the cost of the New system, it is sufficient to say that the expences of administration are enormously out of proportion to the moneys expended on their right objects. As is the case in every instance of centralized control and interference, by a system forced upon the country under loud pretence of the extravagance of the old system, and under the "fair flattering preamble" of the economy of the new, an enormous proportion of the whole fund raised for the special object pretended, is swallowed up in satisfying the cravings of an army of functionaries who regard the Public only as existing for their own benefit.

It is needless to dwell long on the "Union" system. It was devised in order to destroy, the more effectually, the sense of local duty and responsibility, and to give, the more easily, absolute controlling power to the Central Board. And

* See before, pp. 277, 278.

these aims have been successful;—to the increase of the sufferings of the poor; to the deepening of their moral degradation; to the lessening of the knowledge of and taking part by every district in its own affairs,—and consequently to its less habit of attention to them; and to the vast increase in the cost of the working of the system.

Can no means be devised to work out a Poor Law system more healthily than this? Assuredly they might. But it will not be by a national poor rate. The necessary effect of such a device can only be the immediate increase of the evils which now exist. The idea of a national poor rate must have originated under the influence of some who are eager for the further spread of Centralization. The proposition calls to mind the Ostrich, which, hiding its own head, thinks itself unseen. It has always, however, been one great and constant object with the enemies of freedom to centralize all taxation; that is, to make it general and under central control, so that no one place shall feel or know what itself pays; that the less watchful eye may be thus kept over the amount levied and the mode of its expenditure.

The remedy must be looked for in a very different direction, and be achieved by widely different means.

It has been well remarked, with respect to the social condition of those who come within the range of the Poor Law operation, that the being compelled to seek aid "does not necessarily *imply* either laziness or improvidence. Commercial derangements,—the scarcity of gold or cotton,—manufacturing stoppages,—mechanical improvements,—Irish 'clearings,'—causes over which no *individual* labourer has the slightest control,—deprive him of employment and bread. Society has two ways to keep him from starving,—*it has chosen the worst and most expensive.* Alms and enforced idleness degrade him: the confinement, separation, garb, and dietary of a workhouse,—oakum picking, and useless 'tests,'—destroy his self-respect and self-reliance, his habits and capacity for labour. He is *now* a pauper. His children

necessarily taken from school, and thrown upon the streets, grow up paupers, or worse.

"It is clearly the interest of all—of those who live by labour, and those who consume its products—that the unemployed should not thus be *converted* into paupers; that, instead of being compelled by Poor Law regulations to be useless, dependent, and degraded, they should be enabled to *continue* industrious and self-dependent. What is the *interest* of society, is the *duty* of those who manage its affairs, viz., to *make* the unemployed independent and self-supporting, by the substitution (1) of PRODUCTIVE EMPLOYMENT for useless labour tests, and (2) of PROPORTIONATE PAYMENT, either in money or kind, for the work done, in lieu of the present arbitrary and invariable weekly 'relief.'

"The Relief and Test system being directed, not to make the idle industrious, but solely to decrease the allowance of food to the unemployed and destitute, has gradually brought the treatment of the poor down to, or below, that of convicted felons. Even in gaols the inmates are maintained in health, are sometimes rendered self-supporting, and morally benefitted, by useful labour. By treating as we do those whose only crime is inability to get work, honesty is discouraged; the needy commit theft for the purpose of getting into prison; schemes really effective for reclaiming young offenders are rejected, because affording a better provision for the criminal than is made for the poor and well-behaved members of society." *

The obvious mode of staying evils the enumeration of the actual extent and immediate results of which might be greatly extended, consists in a reversal of the present system; in returning, from an unnatural attempt to benumb and crush the faculties of men, to a course which shall tend, instead, to develope them in healthy exercise. To substitute productive labour for useless tests is, at the same time, to return to the

* These passages are extracted from an able paper extensively circulated in 1850 on the subject of the Poor Law, and proposing practical measures of remedy.

idea under which a Poor Law was first framed; to elevate instead of degrading those who come within the range of the system; and to relieve the rest of society from the pressure of a burthen which prevents that power of free exercise of all their opportunities, by all, which would otherwise exist. In every point of view the substitution of such a system would be a blessing to society, and the advantage would be felt by every member of it, poor and rich, without exception;—a rare result of any improvement. That proposition must certainly command the attentive consideration of every sincere well-wisher to the elevation of the physical, moral, and intellectual condition of the people, which has, as its aim, the "rendering the subsistence and education of the poor, dependent, not, as at present, upon monetary and other circumstances beyond the individual's control, but entirely on his own labour and exertions: thereby encouraging, to the utmost, industry, intelligence, forethought, and self-dependence amongst the mass of the people."

Such views are not theoretical: they are, in the fullest sense of the term, practical. And they are not only practical but practicable. They have been tried;* and, notwithstanding obstructions offered, as usual, by Central Poor Law Boards, wherever tried they have had successful issue.

The full and efficient practical avoidance, by any such means, of the evils engendered by the (so-called) Poor Law Amendment Act, must, however, clearly depend on the entire control and management being lodged, as in other matters, in the hands of those upon the spot, and within ranges sufficiently limited. By men so placed only can "the truth of the matters be the best known." They alone can be familiar with the modes of occupation most suitable to the

* As any discussion of specific remedies is purposely avoided in this Work,—which is confined to the exposition and illustration of permanent and fundamental Principles,—any details as to Poor Law suggested amendments are omitted. The quotations and facts above given and alluded to, are cited as directly illustrative of the difference between a system which depresses and one which developes.

special circumstances, and with all their varying conditions. In the case of the Poor Law, as of every other topic that can be touched upon, the only means by which every man can constantly be made to feel, and act upon the consciousness, that Society has a claim on every man, as well as every man having a claim upon Society, is by the active practical recognition of the Principles of Local Self-Government.

CHAPTER XXVIII.

POLICE.

THE nature and consequences of the system of Summary Jurisdiction have been already shown. Allusion has also been made to the nature and consequences of a Centralized Police.*

The enforced combination of these things is called, in its effects, *maintaining order*. It is true that a certain superficial appearance of order may be maintained by this means. But it is forgotten that the same outward show of order may be produced by very different means, and may indicate very different symptoms as to the actual condition of society. There is no doubt that the more completely a whole country can be brought under the quailing dread of the iron heel of an armed police, the more completely will the dull outward show of order be preserved. But this, as usual in the works of Centralization, is only the materialistic external result. No true peace and order can exist,—consistent with human action, energy, and enterprise,—except such as springs from genuine confidence between man and man.

The affronts on civil liberty that are daily happening through a system of centralized police, must rouse the indignation of every man of sense, spirit, or independence. An impertinent intermeddling surveillance is every day growing. And this is even availed of, and boasted of being availed of,—and that, even in England,—by private persons and for private ends. Whether to protect wrongful enclosures of public roads, or to

* P. 204.

help the vaunted efforts of servants' registration societies, the instrumentality of the police is publicly announced; while the Commissioners of Police employ their time in considering the propriety of females riding upon omnibuses, and presume to attempt to dictate on such subjects.* At the same time, these Commissioners set up their pleasure as of higher authority than Acts of Parliament; and so much only of the provisions of the Police Acts as they please is allowed to be in force.

The inefficiency of the centralized police system was strongly shown in 1850, when many daring burglaries and other felonious attempts were made;—the fact of the making of which proves, in itself, how little real or reliable protection has been attained by such a system. The most daring of these attempts were made within the limits of the Metropolitan Police. But that Police afforded no protection nor redress; and, where the Burglars were repelled the most completely, and with the most striking moral effect, it was not done in the slightest degree through the aid of the Police. Yet this proved inefficiency was immediately made the excuse for proposing to extend, still wider, a demoralizing and most dangerous system; a system consistent with the spirit and purposes of despotism only, and which may, at any time, be made use of in a manner altogether hostile to civil and political liberty.

The only Police system that can ever be really efficient, morally and truly, instead of merely physically and superficially, must be one which is founded on mutual confidence and immediate local responsibility.

It has been already frequently remarked that the whole Constitutional system of this country rests on the idea of mutuality and responsibility. The ancient, and most efficient, police system had, like every other part of the system, its foundations in this idea.† The details, suited to a particular time, are unimportant. The important practical prin-

* Cases of each of these occurred in 1850. † See before, p. 204.

ciple, ever applicable, is, that every local body, whether Hundred, Borough, or otherwise, is in the nature of a mutual assurance society. Every man was bound, at a certain age, to take the *peace-pledge*, and so became a member of the Associated Body,—one of the mutual pledges for the good behaviour of the whole Body, and of every individual member of it.* The efficiency resulting from such a system is self-evident. Where every man is jointly responsible for any misdemeanour committed by any member of the district, all are stimulated to the greatest vigilance in maintaining the well-being and good-ordering of that district: while, on the other hand, the knowledge that such vigilance exists, is the surest check to the growth and spread of crime. This is well illustrated by the known fact that, where Societies for the prosecution of felons exist, the knowledge of the certainty of immediate and active prosecution is a very effectual deterrer, and the members of such Societies are rarely subject to any outrage.

The principle of mutual assurance is practically recognised in many things in modern times. But there is none to which it could apply so usefully, and with such a moral efficacy,

* The term BOROUGH implies, according to the Common Law of England, certain conditions and functions of Local Self-Government, inherent to it as an Associated Body. Among these, one of the most distinctive and express has, from the earliest times, been the control and management of all that relates to the keeping of the public peace. (See quotations in "Government by Commissions," p. 63; and see before, pp. 243, 244.) The so-called *Reform Act*, among other illustrations of the empiricism and want of all reference to Principle which mark it, pretends to create certain *Boroughs*,—without imparting to them any of the functions that really do alone characterize a true Borough. Such are all the Metropolitan (so-called) Boroughs. On one occasion I publicly distinguished these so-called Boroughs—true exponents, as they are, of what Centralization is and does—as "Bastard Boroughs." The term was responded to;—and it will be useful if it sticks to them till they prove their manhood by rearing up, through their own efforts,—as the Common Law has been shown, in these pages, to enable them to do,—proof of their Legitimacy. See before, p. 129; IInd Constitutional Safeguard.

and at the same time so easily, as to a system of Police. Anciently it was applied even still further; namely, to matters of common obligation.* Traces of this yet exist in the liability of Hundreds in certain cases; but these are so rarely applicable as to be of no practical influence on society.

But, to the moral effect of a system based on such a sound principle, a sound practical mode of administering a constabulary must be added. In the keeping of the peace, beyond—if possible—any thing else, the necessity for entire local administration is self-evident; as also is it that a centralized system must be fraught with the most serious dangers to civil liberty.

It is clear that the persons most interested in maintaining the peace and well-being of any district are those dwelling within it; and that there is no matter on which the sense of duty and responsibility is so easily able to be roused. Added to this, they alone can know precisely the conditions and circumstances which, to render a police system efficient, must be known by those administering it. It needs but the mutual peace-pledge, the mutual assurance system, to induce all to take a prompt and active part in this important matter.

The class of men to whom should be committed the special charge of peace-keeping also needs remark. The centralized system is a very convenient means, it is true, of obliging noblemen and gentlemen who happen to have any troublesome pensioners, or inconvenient tenants, or others that they want to provide for at the public expense. But the men employed must, under a sound system, partake of the raised character of the whole arrangements. No stranger ought to be allowed, except for very special reasons, to be employed as peace-keeper in any district; but those employed should have, as a necessary qualification, the holding, themselves, a stake and interest in the district within which they serve.

* Maddox, in his *Firma Burgi* (1726), has a chapter of collected instances. See p. 154. Many more might be added.

They should be selected by those chosen by the inhabitants, and responsible to them, for the management of this special matter,—or of this together with the other affairs of the district. They would thus have the double consciousness,—so important always to be combined, and which combination the true statesman will always strive to effect,*—of their duty and responsibility, as the chosen conservators of the peace, and also as having themselves an immediate interest, not in making a show of activity, but in the real keeping of the peace; as themselves personally forming a part of the mutual peace-pledge,—the district assurance union.

It cannot but be self-evident how different such a system would work from one under which a number of men are turned into a number of districts, having themselves no stake or interest in those districts, and no responsibility to the inhabitants of those districts; subjected, instead, to the orders of one or two men, to whom they owe their own appointments,—and who are themselves also entirely irresponsible to any of those districts, but whose appointments are, on the contrary, solely within the patronage and held at the will of the Crown. The latter system is the Metropolitan Police system,—extended, in effect, to many other places. The former is the constitutional mutuality system, which alone the Common Law recognizes.

It is so obvious that the constitutional system thus barely outlined would be, in all respects, a complete and efficient *preventive* system as well as a *protective* system; and that its efficiency in the latter respect would infinitely exceed any thing that can be achieved under an irresponsible and centralized system; that it cannot need more than to be once understood for its re-establishment to be demanded. And it is a recommendation that ought not to be omitted, though very minor in comparison with those that have been mentioned, that its efficient re-adoption would save by far the larger part of the enormous expence which is caused by the present

* See, as a practical illustration, before, p. 84.

system. Mutual confidence would replace mistrust: the assurance of an earnest active vigilance (but never endangering civil liberty) would replace the mere parade of hired vigilance;—but which latter is continually being impertinently, offensively, and unjustifiably employed, by those whose interest it is, not to maintain peace, but to make a show of activity. Finally, the sense of a true and active mutual responsibility in all, would beget a mutual confidence, and a mutual zeal, and an elevated moral tone through every rank and class.

CHAPTER XXIX.

STANDING ARMY AND MILITIA.

STANDING armies in time of peace are another of the results which have sprung out of the dishonest inconsistencies of the Revolution of 1688. Those who have paid no attention to the subject, can ill understand the excitement and bitterness which grew out of the determined attempts to fasten a standing army on England; attempts which were only successful after a very long and strong resistance; and which success was gained by means and pretences anything but creditable. It should be remembered that the unlawfulness of a Standing Army in time of Peace is an express article of the Bill of Rights;—though carefully infringed ever since that measure was affirmed.

As usual in all new devices, popular resistance was met by the assurance that a standing army was "not designed to be made a part of our Constitution, but to be kept only for a little time, till the circumstances of Europe will permit us to be without them;"* an assurance, however, which, though it deceived the country, never deluded the thoughtful. And it is a striking coincidence that it was identically the same pretext which was first used to procure the establishment of a standing army, that has been used, in the middle of the 19th century, to prevent its reduction; namely, fears of a French invasion. This pretence was justly ridiculed by the writers of the time. "I desire to know of these Patriots," says a

* An Argument showing that a Standing Army is inconsistent with a Free Government, and absolutely destructive to the Constitution of the English Monarchy. London, 1697, p. 15.

writer whose productions led to a long paper war,* "how comes an army necessary to our preservation now, and never since the Conquest before? Did ever the prevailing party in the wars of York and Lancaster attempt to keep up a standing army to support themselves? No: they had more sense than to sacrifice their own liberty, and more honour than to enslave their country, the more easily to carry on their own factions. Were not the Spaniards as powerful, as good soldiers, and as much our enemies, as the French are now? Was not Flanders as near us as France?"

So strong was always the feeling against a standing army, that it is a fact, not a little remarkable, that, no longer ago than the reign of Charles the Second,—he having merely a troop of Guards,—the Grand Jury presented the existence of that troop as a nuisance, and a member of Parliament was sent to the Tower for saying that the King might keep Guards for the defence of his person!

The consequences which have followed from the introduction of a standing army, were clearly seen at the time of its establishment. It was well remarked, that, "if Charles the First had had 5,000 men before-hand with us, the people had never struck a stroke for their liberties; or, if the late King James would have been contented with arbitrary power, without bringing in Popery, he and his Black Guards would have bound us hand and foot:"† in which opinion the wisest men agreed;—and the enemies of Free Institutions knew its truth, and hence urged on their measures for fastening a standing army on the land. One of the truest-hearted enemies of despotism that ever lived, Fletcher of Saltoun, well says, that "the power of granting or refusing money, though vested in the subject, can be no sufficient security for liberty, where a standing mercenary army is kept up in time of Peace: for he that is armed, is always master of the purse of him that is unarmed;"‡ that, where once a mercenary

* An Argument, &c., p. 25. † Ib., p. 14.

‡ A Discourse of Government with relation to Militias. Edinburgh, 1698, (but often re-printed in England,) p. 8.

force is admitted, "heavy and perpetual taxes must be entailed, for ever, upon the people for their subsistence; and, since all their relations [i. e. of those belonging to the mercenary force] stand engaged to support their interest, let all men judge if this will not prove a very united and formidable party in a nation."*

To pass over the long and keen contest upon the subject between those in power, and anxious to strengthen and increase it, and the friends of Free Institutions,—some extracts from two Protests of many members of the House of Lords in 1717 shall be given; which will show that constitutional principle was then understood and asserted by some, although the corruptions of courts and the devices of Centralization did succeed in gaining their end. It is important that, in our day, the motives, both for seeking and for resisting the establishment of standing armies and martial Law, should be better understood than they are.

On the 20th February 1717 a Protest was entered on the Lords' Journals, and very extensively signed by eminent Peers, against the Mutiny Bill (i. e. the Bill for maintaining and regulating a standing army). Among the reasons assigned in this Protest is the following:—

"Because the exercise of Martial Law in time of Peace hath not been, in any former reign, allowed within this kingdom by consent of Parliament; but hath, upon any attempts made to introduce such a power, been opposed and condemned by Parliament, as *repugnant to Magna Charta, and inconsistent with the fundamental rights and liberties of a free people.*"

On the 24th February of the same year, on the question of the same Bill's passing, a yet further Protest of Peers was entered; in which are contained the following, among other reasons:—

"Because so numerous a force being, as we conceive, no ways necessary to *support*, may, we fear, *endanger* our Constitution; *which hath never yet been entirely subverted* BUT *by a standing army.*

* Fletcher of Saltoun, as before, p. 29.

"Because such a standing force, *dangerous in itself to a free people* in time of peace, is, in our opinion, rendered yet more dangerous by their being made subject to Martial Law; *a Law unknown to our constitution, destructive of our Liberties, not endured by our ancestors, and never mentioned in any of our Statutes but in order to condemn it.*

"Because the officers and soldiers themselves thus subjected to Martial Law, are thereby, upon their trials, divested of all those rights and privileges which render the people of this realm the envy of other realms; and become liable to such hardships and punishments as the lenity and mercy of our known Laws utterly disallow:—*and we cannot but think those persons best prepared, and most easily tempted, to strip others of their rights who have already lost their own.*

"Because the clause in the Bill enabling his Majesty to establish articles of war and erect Courts Martial [&c.] doth, as we conceive, in all these instances, *vest a sole legislative power in the Crown*; which power, how safely soever it may be lodged with his present Majesty, and how tenderly soever it may be exercised by him, may yet prove of dangerous consequence, should it be drawn into precedent in future reigns."

The question of Standing Armies is one necessarily depending on that other question of a *Militia*. The constitutional armed force of England is, and has ever been, a militia, composed of the freemen of every county; bound, by the Common Law, to be trained and exercised to use of arms; unable to be compelled to go beyond the limits of their counties, unless in case of invasion; and never, except by consent, compellable to go abroad. The Sheriff of each county,—elective by the freemen at Common Law, as has been seen,—is the Leader of the Militia of each shire. The question of a Militia is thus entirely a question of Local Self-Government.* It is clearly impossible to discuss its history,

* See before, pp. 37, 180; citations from Rawley's *Prince*. It will be seen how well aware that writer was of the part which a Militia had in the maintenance of Free Institutions.

nature, and effects here. But it is a subject of too much practical importance not to have some special attention called to it.

The ill effects to the liberties of the country, and the grievous effects in imposing a heavy burthen on it, resulting from a standing army, need no illustrations. But the craft of the enemies of Free Institutions has always been, to throw a slur upon the efficiency of a Militia. Those who "aimed at absolute power, thinking they could never use it effectually to that end unless it were wielded by mercenaries and men that had no other interest in the commonwealth than their pay, have still endeavoured, by all means, to discredit Militias, and render them burthensome to the people, by never suffering them to be upon any right or so much as tolerable foot;—and all to persuade the necessity of a standing force." * This is but the universal policy and practice of Centralization. But is "it to be supposed that mercenaries would fight more bravely for the defence of other men's fortunes than the possessors would do for themselves or their own? or that a little money should excite their ignoble minds to a higher pitch of honour than that with which those are inspired who fight for the preservation of their fortunes, wives and children, religion and liberty?" †

History and fact, as well as the plain reason of the thing, are conclusive on the question of the efficiency of a Militia,—as far exceeding, practically speaking, that of any standing army. The history of ancient Greece needs not to be cited; nor need the extraordinary efforts of the Hungarian Militia, hastily summoned and ill armed, in the war of 1848, 1849, with Austria; when the whole of the strength and disciplined troops of Austria were unable to withstand the energy and spirit of the raw and ill-armed recruits of Hungary. Yet the Hungarian Militia had previously been sneered at, even by a friendly hand, ‡ just as it has long been the fashion to sneer

* Fletcher of Saltoun, as before, p. 41.

† Ib., p. 21.

‡ See Paget's Hungary, vol. i., p. 406.

at the mention of the Militia in England. The History of England is, however, alone sufficient to settle for ever this question. For twelve centuries a Militia was her only, but most effective, defence. Without recalling the wars which, however false was the sentiment, were made identical with national honour,—and which were fought, for the most part, by the national Militia, induced for that purpose to cross the seas (but only by their own consent),* and which, through long continued struggles, did feats of arms unsurpassed, if paralleled, in the page of history,—it is sufficient to refer to the contest between the Parliament and King Charles. The battle of Naseby has been well cited as an instance; that battle having been generally considered the most decisive through the contest. In that battle the parliamentary army was mainly composed of raw recruits, drawn within two months before; and only nine out of the whole number of officers had ever been abroad. Yet this army, thus composed, but fighting for the idea of liberty against the spirit of oppression, drove, like chaff before the wind, an army, equally numerous, of the king, and officered by above a thousand men long inured to service abroad.

The question, indeed, of the efficiency of a Militia is one too clear and self-evident to need much illustration. Like all the rights and duties of Local Self-Government, this will always be decried by the enemies of freedom: and those whom Centralization has already succeeded in making to value mere material personal ease above every sense of duty and responsibility, are induced,—very short-sightedly, however, even to personal advantage,—to join in the depreciation.

Among others of the advantages of relying upon a Militia only, and not on the existence of a standing army, is, the control over foreign wars, and over the consequent extravagant cost and burthen, which the people thus have. An instance has already been quoted, in which the powerful King Edward the First was obliged to abandon a cherished design, because the freeholders refused to comply with his requests. And

* See before, pp. 228, 229.

many others might be quoted. Nay, even though Henry the Third declared that he should stand perjured before men unless the people enabled him to fulfil what he had undertaken, the only satisfaction he got was the very cool, but very proper, answer, that he had no business to make such engagements, and that the people would neither go themselves nor grant him any aids whereby to enlist volunteers.*

There is no question that the introduction of a standing army into England has had results of the most important character, not only in the imposition of grievous and depressing burthens, by unconstitutional means, but in lowering the moral tone of the country; in lessening its spirit of independence; in weakening its real strength; in practically placing its liberties at the mercy of the instruments of centralizing governments;—which latter have, oftentimes, not hesitated to set at defiance the expressed will of the people, and to interfere with the lawful expression of that will, by means of the arm of the military; as they have also, in a but kindred spirit, been seeking, more lately, to get the means of doing by the additional instrument of a mercenary and centralized Police. The remedy for both mischiefs is, in reality, very simple. Common-places and shallow sophisms are the only means by which the maintainers of the only constitutional force,—a Militia, instead of a standing army,—can be met. Unhappily those common-places are uttered, and those sophisms repeated, till they come to be believed in by the unthinking;—so true is it that "the generality of all ranks of men are cheated by words and names; and, provided the ancient terms and outward forms of any government be retained, let the nature of it be never so much altered, they continue to dream that they shall still enjoy their former liberty; and are not to be awakened till it prove too late."†

* Matthew Paris, p. 514, &c. (A.D. 1242);—and observe the crafty tricks used on that occasion to extort assent. See further, Mat. Paris, p. 646 (A.D. 1248).

† Fletcher of Saltoun, as before, p. 5.

CHAPTER XXX.

TAXATION.

Allusions have been often made in the foregoing pages to the subject of Taxation. From these a sufficient insight will have been gained into the very direct and important bearing which the questions of Local Self-Government and Centralization have upon that matter.*

It has been clearly shown that taxes were not, of old, voted as matters of course, in England; nor in thin and nominal houses of Parliament. Many times, though urged with great importunity, they were refused. And never, in a question of emergency, was a fresh tax granted without previous conference with those who had to pay the tax. The king himself was so conscious of the necessity of actual, and not the modern merely nominal, consent, that instances can be shown in which he sent round his own private emissaries to try to persuade different Boroughs, &c., to assent to particular taxes. And when the tax was granted, it was oftentimes coupled with the express condition that it should be expended in a way prescribed, and for the matter which was alleged as making special need for it. It might perhaps astonish modern Ministers to hear conditions tacked to Votes that "the which grauntes of subsidies be made by the said Commens, on the conditions that folwith: That is to sey, that it, ne no part therof, be beset ne disspendit to no other use, but oonly in and for the defense of the seid Roialme; &c." †

And as the fact and purpose of the tax to be imposed were

* See the head "Taxation" in the Index.

† Rolls of Parliament, 2 Henry VI., No. 14.

thus brought under the immediate cognizance and discussion of those who had to pay it, so was the amount.* No system of national taxation, in the modern sense of the term, is recognized by the Common Law of England.

National taxation, as it exists in modern times, is a very ingenious device of Centralization for raising enormous amounts of money without the people who pay it being aware how the amount really falls, proportionably, on them, or for what purposes it is expended. Had the constitutional system, of the local assessment and collection of all taxes, remained in use, there would have been no possibility of inducing the several shires and boroughs of England to agree to burthens so enormous as have, by the device of *indirect taxation*, been fastened on them. The system of the local assessment and collection of taxes, was employed, in some matters, even so late as William III.'s time, and until it was felt what a paralyzing check it gave to wide-extended efforts at extravagant expenditure and the encroachments of Centralization. In all the acts granting aids and subsidies, the specific portion of each shire and borough is separately named, down even to shillings and pence. And it will be felt how the represented (for septennial parliaments had not then been devised) would hold their representative responsible if, when his shire or borough was called over, he was not in his place to object either to an unfair proportion or a too heavy total tax. All this is evaded when millions are voted to be levied by the mode of indirect taxation, and in the way of a general fund,—a national rate,—the individual burthen of which, on either shire, borough, or person, is thus craftily disguised. Thousands upon thousands, and millions upon millions, are thus thrown, unwatched, and therefore unchecked, as a continually added burthen, on the taxation drawn from the earnings of the people. It has been by this indirect system of taxation only that the National Debt of England has been able to be piled up.†

And the economy of a Local system of *collection* is no less

* See before, p. 133. † See before, p. 203.

clear than the economy from Local watchfulness over the *amount* to be actually collected. At present an enormous per centage of the whole revenue is absolutely wasted in an extravagant system of centralized collection;—absorbed, a dead loss to the public, on its road to the Exchequer. Under true Local Self-Government, each district knows its own quota, levies it as it likes, and in the most convenient way for all within its bounds, and in the most economical way. All it has to do is to return into the Exchequer its actual *proportion* of the *whole* amount settled and adjudged by a thoroughly responsible Parliament. Every place has its own local rates to collect. The collection of the one for national purposes can be done by the same machinery, at a merely trifling addition of expense, and under that full responsibility which can alone ensure at once unoppressive efficiency combined with economy.

Local extravagance, though it may sometimes exist where Local Self-Government has become benumbed, can never be so great as central extravagance. There must always be a greater check, even under the most imperfect shape of Local Government, than there is under a centralized system. Under true Institutions of Local Self-Government the check would be complete; and any extravagance, in any correct sense of that term, impossible.

It is unnecessary to touch here, at any length, upon the Land Tax, which has become so unequal, but to which it has been proposed, by empirical politicians, to apply remedies far more unequal and inequitable in their operation than its continuance itself is. Nor is it fitting that any other specific tax should be dwelt on. The unconstitutional and mischievous nature of the Excise, Customs, and other forms of indirect taxation, has been already alluded to.

The qualities of a system of true Direct Taxation, as here meant, should not be misunderstood. True direct taxation does not mean merely, taxation paid directly out of pocket. It does not mean taxation paid, in settled proportions, per-

manently fixed, on the products of industry: it does not mean taxation on the results of useful effort or enterprise. Such taxation may be levied in immediate payments; but it will operate, necessarily, in restraint of freedom, effort, and enterprise. The Window Tax, the Excise system, Tythes, &c., are not true direct taxes. They are all drafts on the products of industry; restraints on the free putting forth of effort and enterprise; trammels on the full scope of these, —and, so, on the development of industrial resources. And no man can be earnest or sincere in the profession of what are called *Free Trade Principles*, who does not include all such questions within his range of view; and who does not insist on the adjustment of them all, as of far greater importance than that of any single, and therefore, one-sided, object—such as even the Corn Laws, or as the Window Tax. A true system of direct taxation will stimulate, instead of restraining, effort and enterprise: it will impel exertion to rise beyond the pressure of any fixed proportion of one time. The total true and legitimate National expences do not increase in the same proportion as the national wealth. At every time, the sum to be raised should be determined according to the actual exigencies: it should be raised by proportionate direct payment out of the means of all, in a mode equal to all: and both these points should be subject to continual discussion and, where needed, re-adjustment. Any fixed tax, permanently imposed, is clearly inconsistent with sound policy;—with freedom of Political and Social Institutions;—and with freedom for the development of skill and of commercial enterprise. But it is the trick of those who love not the reality of Free Institutions, to shape and impose systems of fixed and permanent taxation;—and so to prevent constant watchfulness and discussion and adjustment, by freemen, in respect to the amounts and applications of the Revenue; which is always drawn, however, (whether disguisedly or openly,) from their own resources, and which is so much abstracted from the enjoyment, by each, of the fruits of his own honest labour.

The results of the alteration from a system of direct taxation, based on Local Self-Government, to an indirect one, based on Centralization, have been, and are, truly startling. The National Debt is no mean instalment of such results. But every Constitutional Principle has become habitually violated.* Parliamentary assent to any money votes has become almost a mere form. Expenditure is made without the least reference to the assent and consent of the folk and people first had and obtained; as the Common Law and the Constitution require. And if any man would,—in order to awaken attention to a subject so importantly affecting the power of each man to use, to the best advantage, the opportunities and faculties he has,—show to his neighbours the part and amount of the burthen which, through their apathy, has been stealthily fastened upon them, he is stopped, at the outset, by that craftily devised scheme of Centralization by which each place is no longer separately assessed, and its share separately and cheaply collected, under responsible officers; but its share is undistinguishably merged in a great and mystified whole; and that whole is collected, wastefully and extravagantly, under a centralized and altogether irresponsible machinery.

Nothing can be more clear than that the only true ground upon which any sound course of Financial Reform can be based is,—the insisting upon the entire abrogation of the system of *Indirect* taxation, and of the *Centralized* system of *Collection;* and the substituting for it of the Constitutional system of *Direct* taxation, and of a system of *Collection* under the entire control of Institutions of Local Self-Government. Men may, peradventure, be startled when called upon to pay, in a direct form, twenty-five per cent., or more, of the income of each (this being a low estimate of the proportion now actually paid by most in the middle classes of life)

* See "Government by Commissions," pp. 82, 83, 183, 194, 251, 252, and *note*, 358, &c. &c.; and before, pp. 201—204.

towards the national taxation: but the public sense of the necessity and importance of a careful watch being kept upon the course of government and expenditure, will be more surely and lastingly aroused by such a form of claim than it will ever be while the same amount is extracted, stealthily and craftily, from the pocket of each man by the wasteful as well as arbitrary system which Centralization has devised and cherishes,—that of *indirect taxation*.

CHAPTER XXXI.

CENTRALIZATION IN LAND.

MANY more topics might be touched upon; and the importance of the practical application of the Principles of true Local Self-Government would only be further illustrated. What have been already introduced must, however, be sufficient to show that there are no institutions or arrangements of society, of any importance, which are not nearly dependent, for their sound and healthy working, upon the practical application of the Principles of Local Self-Government, and thwarted or perverted by the influence of Centralization. But there is one topic, intimately connected with all social arrangements in every country, which it would be hardly proper to leave the immediate consideration of the subject without touching on; especially as mischievous fallacies have been spread abroad concerning it. It is, the holding of Land.

Writers and speakers appealing to prejudice and passion are fond of declaring that the laws relating to property in England have been framed, and are retained, "for the express purpose of keeping the land in the hands of a few proprietors; of depriving the peasants and small shopkeepers of any part of it, and of the influence which its possession confers; and of supporting a great proprietor class."* However much such statements may serve to excite an audience, or to become the convenient basis for a theory, nothing is more certain than that they are without the

* This is thus stated in Mr. Kay's work on the Social Condition of Europe, 1850.

shadow of foundation. The putting them forth must, then, do much mischief, as tending to hinder (from an idea of its impracticability) the increase of the class of small and middling freeholders of land.

There is nothing whatever in the Law of England to keep the land in the hands of a few proprietors, or to hinder any man from holding any quantity of it, and enjoying its accompanying influence. So directly opposite are the facts to such statements, that the system of engrossing the land in the hands of a few great proprietors is a thing of but modern date in England. A very moderate acquaintance with the history of England, and with that of her laws and institutions, would inform any one that, instead of those laws being devised for the purposes thus suggested, and instead of the state of things thus suggested having been generally the fact, that state of things has always, till lately, been widely different; and that those laws expressly, and fundamentally, contemplate as an essential feature of the institutions of the country,—and it is a remarkable characteristic of them,—the existence of a very wide-spread class, covering the whole surface of the land, of small and middling landed proprietors. The existence of a large body of freeholders in every district, enters specially into the old practical arrangements of Institutions of Local Self-Government.

Domesday Book itself affords striking evidence of the great number of freeholders existing at that time. Though only enumerating special numbers, for special purposes, and in only some out of all the counties of England, nearly 25,000 freeholders are mentioned, independent of denominations which are doubtful in meaning. Many illustrations which have been already brought up, show the great numbers of freeholders that, through ages, existed over the whole land. And numberless more such proofs might be quoted. One only shall be now recalled: and this shall be done, both because it shows in a remarkably conclusive way the number, and also the condition, of the small landed proprietors in the 15th century, and because it shows the just notions

which thinking men then had of the circumstances immediately connected with the maintenance of Free Institutions.

The Prince is represented to have asked of the Chancellor Fortescue how it happened that the Common Law as to juries worked so well in England, but was not elsewhere adopted. The Chancellor answers, after some description of the country (for the dialogue is supposed to be held in France), that "the same country is so filled and replenished with landed men, that therein so small a little hamlet cannot be found wherein dwelleth not a knight, an esquire, or such a householder as is there commonly called a Franklin, enriched with great possessions; *and also other freeholders, and many yeomen* having sufficient estate to make a jury in form aforementioned. * * * After this manner, oh! mighty prince, are none other realms of the world disposed and inhabited. For, though there be in them men of great power, of great riches and possessions, yet they dwell not one nigh to another, as such great men do in England; *neither so many inheritors and possessors of land are elsewhere as in England.* * * * How, then, can a Jury be made in such countries of twelve substantial men, nigh adjoyning to the place of any deed brought in judgment;—seeing they cannot be called neighbours that dwell so far asunder. Truly, twelve sworn men, there [out of England], must needs be far distant from the place of the deed, when the defendant in those countries hath challenged thirty-five men of the next dwellers. * * * Marvail not, therefore, most worthy prince, if the law whereby the truth is sifted out in England be not frequented and used in other nations. For they are not able to make sufficient and like juries as be made in England." * It follows that, in his time, there were, at the least, forty-seven freeholders in every hamlet. And, the proportion of male adults to inhabitants being one to five, this implies that almost every grown man was a freeholder, —as the number of 235 is certainly a full complement of inhabitants for each "little hamlet."

* De laudibus legum Angliæ, cap. 29.

And the condition of the men in England,—which Fortescue ascribes to their free government, and which latter he thus immediately connects with the condition of freeholdership,—is thus contrasted with the wretchedness he saw everywhere around him abroad:—"Every inhabiter of that realm [England] useth and enjoyeth, at his pleasure, all the fruits that his land or cattle beareth, with all the profits and commodities which, by his own travail, or by the labour of others, he gaineth by land or by water. [There was no national debt, excise, or indirect taxation, then.] They drink no water, unless it be so, that some for devotion, and upon a zeal of penance, do abstain from other drink. They eat plentifully of all kinds of flesh and fish. They wear fine woollen cloth in all their apparel. They have also abundance of bed-coverings in their houses, and of all other woollen stuff. They have great stores of all hustlements and implements of household. They are plentifully furnished with all instruments of husbandry, and all other things that are requisite to the accomplishment of a quiet and wealthy [well-to-do] life, according to their estates and degrees."* The title of "merry England" was not undeserved when such was her condition. The picture here presented is the picture of a country in which Institutions of Local Self-Government had not yet been crushed out by the encroachments of Centralization.

The gradual means by which Institutions of Local Self-Government have become undermined have been before shown. As regards that part of the process which has produced the absorption of the land, from being held by many small proprietors into the hands of a few great ones, the same causes have tended towards it; but the chief impulse has been given by the modern doctrines of a hard and pedantic system of (so-called) political economy; which, dignifying itself by the name of science, has done all in its power to abet the ends of Centralization, and to degrade mankind to the mere level of the brute; treating every topic, in the true spirit of Centralization,

* De Laudibus, &c., cap. 36.

from a material point of view. It is this school which, without any reference to social, moral, or political relations, has urged on the system of large farming, together with other doctrines of a like nature, all hostile to human freedom and true progress, and based, as any magnificent system paraded with a great appearance of science may be, upon certain actual superficial data, but omitting all consideration of other, and the most important, conditions.

The enormous extent to which enclosures of Common Lands have taken place within the last half of the eighteenth and first half of the nineteenth centuries, in all of which Common Lands every man before had a freehold interest, has had, in itself, an injurious moral tendency in many respects; while it has helped the swelling of large estates, and not the creation of an additional number of smaller independent proprietors, as would have been done had the Spirit of the Common Law been regarded. The general topic of Enclosures, and its social, moral, and political results, though all of them important, cannot now be discussed: nor can, otherwise than by bare allusion, that extraordinary transaction by which, in the seventeenth century, those having manorial rights contrived to get the burthens, subject to which they and their fathers had, through centuries, inherited their possessions, taken off altogether from themselves, and an equivalent laid, as the consideration of the boon thus gotten for their own exclusive benefit, upon another class, in no way benefited by the transaction; while the owners of those manorial rights contrived to keep still fixed upon those who held under them (the modern copyholders) the burthens which had only been placed on the latter as a proportionable share, according to the quantity of land held, of the burthens which the superior landlord had to discharge for the whole together. This transaction was a compound wrong, which no difficulties in the way of adjustment can excuse. And this great wrong, the fruit of the Restoration, and carefully left untouched by the interested advisers of William III., still remains unrighted. The poor man is still burthened with excises, that the possessions of the rich man may be held freed from burthens

which they used to bear; and the copyholder still pays his fines and fees into the pocket of the manorial Lord,—but which the latter unlawfully appropriates to his own private benefit, instead of their being paid over by him (which is the only ground of claim for them) in part discharge of his own inherited burthens!!*

In the early part of the eighteenth century a paper was published which strongly and strikingly expresses the dignified sentiments of self-respect and independence which the position of a freeholder naturally induces.† A freeholder is asked "*what privilege he enjoys by being a freeholder of Great Britain?*" He replies:—"By being a freeholder of Great Britain, I am a greater man in my civil capacity than the greatest subject of an arbitrary prince; because I am governed by laws to which I give my consent; and my life, liberty, and goods cannot be taken from me, but according to those laws. I am a freeman!" *Who gave thee this*

* 12 Car. II., c. 24. Blackstone himself admits that this was an acquisition to civil *property*; and that "an annual fee farm rent," payable by those relieved, would have been "an expedient seemingly much better than the hereditary excise." Vol. ii., p. 77. It would certainly have been more consistent with honesty than was a measure by which John Nokes got rid of his own burthens,—which had been inseparably, in all former times, attached to his possessions,—by fastening a new and most obnoxious burthen upon Thomas Styles, no part of which latter burthen he (John Nokes) bore at all; while he continued to levy contributions upon Peter Jones, the only pretence for levying which latter had ever been to enable John Nokes to discharge the obligations which he had thus got rid of at the expense of Thomas Styles. Such was the transaction by means of which Lords of Manors got rid of all their own burthens, but by which they still contrive to commit extortion, and to levy oppressive and depressing burthens, upon copyholders.

† The Freeholder's Political Catechism. 1733. It is curious that Mr. Reeves,—the author and President of the Societies got up, at the close of the eighteenth century, in opposition to the "Corresponding Societies," under the name of "Loyal Associations for preserving Liberty and Property against Republicans and Levellers,"—took this Catechism as his model, and borrowed largely from it in the "British Freeholder's Political Creed," which his Associations issued.

liberty? "No man gave it me. Liberty is the Natural Right of every human creature. He is born to the exercise of it as soon as he has attained to that of his reason. But, that my liberty is preserved to me, when lost to a great part of mankind, is owing, under God, to the wisdom and valour of my ancestors, freeholders of this realm." *What is the sum and substance of the virtue of a good citizen?* "The love of our country comprehends in it the virtues of a good citizen, as the love of God those of a good Christian. It is the love not only of one, but of millions of neighbours: not only of our neighbours now living, but of them and of their posterity." Later, he is questioned more specifically as to his duties; and, among the rest, he enumerates the heavy responsibility of giving a well-considered vote for a representative. What follows approaches, in its lofty spirit and noble sentiment, to the sublime. Well may it dwell upon the mind of any who may be disposed to favour any part of the blighting and soul-killing system of Centralization.

Thou hast perhaps but one vote in five hundred, and the member is perhaps one of five hundred more: then your share of the guilt of [*a corrupt election*] *is but small?* "As he who assists at a murder is guilty of murder, so he who acts the lowest part in the enslaving his country, is guilty of a much greater crime than murder." *Is enslaving one's country a greater crime than murder?* "Yes: inasmuch as the MURDER OF HUMAN NATURE IS A GREATER CRIME THAN THE MURDER OF A HUMAN CREATURE; or as he who debaseth and rendereth miserable the Race of Mankind, is more wicked than he who cutteth off an Individual!" *Does not the* TRANQUILLITY *occasioned by absolute monarchy* [Centralization] *make the country thrive?* "Peace and plenty are not the genuine fruits of absolute monarchy [Centralization]; for absolute monarchies [countries governed by Centralization] are more subject to convulsions than Free Governments; and Slavery turneth the fruitful plains into a Desart:—Whereas Liberty, like the Dew from Heaven, fructifieth the barren Mountains."

CONCLUSION.

WHOEVER would ward danger off must be prepared to look that danger resolutely in the face. But, doing this, it is no less necessary that he should also well know and remember what it is that is worth warding off danger from.

That a mischief has got to great head, is no reason for despairing of relief from it: but it is reason, instead, for searching the more carefully into the nature of that mischief. The true patriot will never sit down and deplore what may rouse either his grief or his indignation. He will rather say, always:—"The State is inclining to a consumption, yet not incurable;"* and will seek what cure may best be found.

When a system, like that of Centralization, is the great mischief to be struggled with, it will never help the cause of those who would remove it, to condescend to deal with it and its abettors as other than a *system*:—individuality and personality are quite beside the mark; and the descending to these will but serve to divert attention from the true radical mischief. Nor should it ever be forgotten, too, that many may become, by circumstances, mixed up with the working of a system without having had any original designs hostile to the liberties of their fellow-men. It is, in many, as much want of consideration (though undoubtedly such consideration is the duty of all) as it is fore-plotted ill, that leads them to help forward a system that is fatal to Free Institutions and to human progress. Though it is unquestionable that the plan

* Sir Edward Coke; 1 Rushworth, 497.

and objects of Centralization, as a System, have been deliberately begun, and are being as deliberately carried on, in order to undermine Free Institutions, yet it may oftentimes be "worth observation, that, though" some particular measure "was fatal to Liberty, yet it was not introduced by the contrivance of ill-designing men; nor were the mischievous consequences perceived, unless perhaps by a few wise men, who, if they saw it, wanted power to prevent it."* Those placed in responsible positions, too often allow themselves to "deal with other men's hands, and see with other men's eyes."†

In the preceding pages it is PRINCIPLES only that have been dealt with; principles which lie at the bottom of the foundations of Political and Social organization.

It was stated at the outset, that LOCAL SELF-GOVERNMENT *is that system of government under which the greatest number of minds, knowing the most, and having the fullest opportunities of knowing it, about the special matter in hand, and having the greatest interest in its well-working, have the management of it, or control over it;* while CENTRALIZATION *is that system of government under which the smallest number of minds, and those knowing the least, and having the fewest opportunities of knowing it, about the special matter in hand, and having the smallest interest in its well-working, have the management of it, or control over it.*

These definitions have been proved, and been practically illustrated. They should abide in the memory of every man earnest after human freedom and true human progress. They will be found to yield a key applicable to numberless occasions where doubt may exist, or where subterfuge and craft are being had recourse to for the disguising of the stealthy steps of despotism.

Nearly connected with these definitions, and illustrating their practical meaning and application, definitions have been offered, and been proved and illustrated, of Common Law,

* Fletcher of Saltoun's Discourse on Militias, p. 6.

† Coke; 1 Rushworth, 497; and see before, p. 177.

and Statute Law. It has been shown that COMMON LAW *is that law which* SPRINGS *immediately from the folk and people themselves, and which is also* ADMINISTERED *immediately by the folk and people themselves:* while STATUTE LAW *is that law which is made by a body existing and acting by virtue of a derived authority only; and it will be always tending to encroach on Common Law, unless jealously restrained by the keeping in ceaseless practical activity of certain* CONSTITUTIONAL SAFEGUARDS. Common Law owes its origin to the *real* consent of freemen; and requires itself to be really dealt out by them: Statute Law has only the *theoretical* consent of freemen; and the dealing of it out by them will always be sought to be trenched upon.

MUTUALITY and RESPONSIBILITY have been shown to be two of the most important practical ideas that run through the whole of the Common Law of England. It has been shown that these ideas attain their truest and noblest realization by means of that system of Local Self-Government which forms the whole groundwork and sole strength of the English Constitution.

Whoever has feelings of true manhood in him must contemplate with pride, well justified, how these principles and ideas have lived and borne good fruit in England through many changeful centuries; and must be impressed with a deep sense of how worthy is the work he sets himself to do who seeks to give what aid he can towards the practical realization again, in full vital activity, of these principles and ideas, and of the Institutions by which alone that realization can be secured.

It will be felt to become a duty to resist, steadily and unflinchingly, every further encroachment and unconstitutional attempt that may be tried; and to lose no opportunity of fixing attention upon encroachments heretofore made, and so of stirring up the spirit of freemen to insist on withdrawal back from them. On no pretext, or ground of temporary expediency, must any concession be made on any point of fundamental principle.

It must never be forgotten that the Common Law, the Constitution, and sound Reason, are all on the side of those who would thus stand up for Free Institutions; and that these supply weapons that cannot but ultimately triumph. Nor should the fact ever be lost sight of that, notwithstanding the extent to which Centralization has unquestionably succeeded in supplanting the old spirit of freemen by a widespread temper of sycophancy, apathy, and selfishness, the skeleton of Local Self-Government yet exists in England, ready for reanimation; and that it needs only that earnest and unselfish men should make the nature, working, and importance of those Institutions known, for that reanimation to be realized.

Nor, amid the disheartenments he will encounter, must the worker in this cause forget that "albeit sometime by acts of Parliament, and sometime by invention and wit of man, some points of the Common Law have been altered or diverted from their due course, yet, in the revolution of time, the same, as the safest and faithfulest bulwark and safety of the commonweal, have been, with great applause, for avoiding of many mischiefs, restored again;"* and that it has been expressly and judicially declared, by the same high authority, "that, in many cases, the Common Law will control acts of Parliament, and sometimes adjudge them to be utterly void; for when an act of Parliament is against Common Right† and reason, the Common Law will control it, and adjudge such act to be void."‡ What has heretofore thus happened and been declared and acted on, may happen and be declared and acted on, again. It only needs for the freemen who are concerned, to understand the important practical bearing of such principles.

The whole matter may be very shortly summed up.

The question between Centralization and Local Self-Govern-

* Coke, Reports, vol. iii., Preface, p. xviii.

† For what the "Common Right" is, on one important point, see before, p. 79.

‡ Coke, Reports, vol. viii., p. 118; and see before, pp. 109 and 123.

ment is a question between dogmatism on the one hand, and discussion on the other; between the supremacy of an irresponsible oligarchy on the one hand, and the practical assertion of the rights and responsibilities of freemen on the other. The question is:—whether the mass of mankind are "but unreasoning animals, to be dictated to and drilled; or whether man is a creature "but a little lower than the angels," and whose high nature can only truly be developed,—but is able to be developed,—by every inducement being held out to independent thought and self-reliance: whether there is a right divine in any Few to think for, manage, and govern the Many; or whether the Many are able to think for, manage, and govern themselves, and have it as their highest and noblest birthright and inheritance,—their right, duty, and responsibility,—to do this.

These questions must not be blinked; nor can any man who has a true and earnest Faith in Free Institutions and in Human Progress, suffer them, in any individual cases, to be avoided or speciously disguised by any plea of exceptional expediency, any spurious liberalism, or any sickly sentimentalism. What are the fruits that Local Self-Government bears, and what are the fruits that Centralization bears, must never be forgotten.

Local Self-Government makes men, everywhere, the maintainers of their own rights, liberties, independence, and well-being; it breeds self-respect and moral dignity:—*Centralization* undermines, everywhere, all those rights, liberties, independence, and well-being, under pretence of setting hired functionaries to guard them; it breeds subservient sycophancy and moral degradation.

Local Self-Government cherishes and developes every moral and intellectual faculty, and gives to each of them, in every man, full scope for action; it humanizes and elevates, and kindles every kindly charity:—*Centralization* crushes and deadens every moral and intellectual faculty, and sets up, in their stead, the presumptuous pedantries of hired functionaries, by which life shall be regulated and action shall be

guided; it brutalizes and debases, and begets and fosters a grovelling material selfishness alone.

Local Self-Government seeks the continual progressive adaptation of what is tried and practical and known:—*Centralization* loves crude speculation, procrustean pedantry, and empirical law-making.

Local Self-Government maintains true peace and confidence between man and man, by the firm bond of mutual sympathy and mutual peace-pledge and responsibility:—*Centralization* strives to keep up an external show of order, by begetting apathy in some and unmanly dread in others, while the fruits of the evils that it generates are sought to be kept from showing themselves above the surface, by a mercenary and demoralizing system of centralized Police.

Local Self-Government makes men to know and to distinguish and actively to discharge the rights, duties, and responsibilities that belong to freemen, whether within the Domestic Circle, the Local District, or the National Union;—and it keeps every Representative Body, Local and General, in sound and wholesome activity, because kept within its due functions by active Safeguards:—*Centralization* seeks to obliterate all sense of the rights, duties, and responsibilities of freemen; to throw every obstacle in the way of the discharge of all of these;—and to make Representative Bodies, whether Local or General, but practical falsehoods,—kept only as forms, under the mask of which the work of Despotism may be the more effectively carried on, and all reality of Free Institutions the more easily blotted out.

Local Self-Government makes freemen always to do Folk-right among each other; and tries and adjudges always according to the golden and straight metwand of the Law:—*Centralization* loves only Summary Jurisdiction; and tries and adjudges always according to the incertain and crooked cord of Discretion.

Local Self-Government brings Law and Folk-Right, and the exercise of all political functions, home to every man's door, speedily, frequently, and costlessly:—*Centralization*

makes the pretences of cheap law, and of political franchises, but the cover for sapping independence and extending costliest functionarism.

Local Self-Government does all its work in open day, before the face of men:—*Centralization* shuns the light of day; works secretly, stealthily, and by indirect and tortuous courses behind the backs of men.

Local Self-Government unites all classes and interests in one effort for the Common Weal,—making every proposition to be freely and fairly discussed before all, and to be determined only after such discussion; that so each may work its way on its own merits, for the common good, and with the common consent, of all:—*Centralization* stirs up jealousies and strifes and heartburnings between different orders and different classes; hinders all discussion, and thrusts down, instead, its own dictated conclusions; it seeks to sow division, that it may the better rule; it fosters only selfishness and the narrowest individualism.

Local Self-Government is identified with the interests of the Many; with the reality and lastingness of Free Institutions; and with true Human Progress:—*Centralization* is identified with the interests of the Few; with oligarchism and arbitrary rule; and with the forced repression of man's natural progress.

Centralization is the foul Dragon that is ever gnawing at the root of Yggdrasil, the great World-tree of Freedom:—*Local Self-Government* is the true Urda's spring, whose pure waters can alone keep freshened, for ever, the strength and growth of Yggdrasil.

It is the highest duty and privilege of Free Men to watch this Urda's spring, and to keep it ever pure and unbefouled. The responsibility lies on all who reverence the memory of true-hearted fathers, who respect their own best interests, and who would hand down a Free Inheritance to their children, to draw continually, from this Urda's spring, the waters by which only can the happy shelter of that Yggdrasil be kept still green and growing.

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N.B. The *Works and Authors cited*, are put under a separate head. The *Rolls of Parliament* and *Statutes* are treated in the same manner. In the case of the latter, the year of the king's reign is put between brackets, and before the page referred to.

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